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Thursday
October 17, 1996

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

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

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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

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

WHERE: Office of the Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6941 of October 14, 1996

White Cane Safety Day, 1996

By the President of the United States of America

A Proclamation

In the summer of 1996, the remarkable display of athletic excellence at the Tenth Paralympic Games in Atlanta, Georgia, inspired viewers around the world. Athletes from across our country, including many who are blind or visually impaired, participated in these games. The tenacity and commitment to excellence that these athletes showed in Atlanta are rich resources for our Nation. From their performance in the Paralympics, and indeed from their many contributions throughout our Nation's history, blind and visually impaired Americans have demonstrated how much they have to contribute.

Individuals with disabilities, like all people, use many tools in their everyday lives, some simple and some technologically sophisticated. The tool most commonly used by blind and visually impaired people is the white cane. This basic instrument enables them to detect obstacles, steps, drop-offs, and changes in surface textures. The independence that blind and visually impaired people gain through the use of the white cane enriches their lives—and those of all Americans—by allowing them to participate fully in and contribute generously to our society.

Blind and visually impaired individuals make valuable contributions to our society and our economy. But they need more than the white cane to achieve their full potential; they also need equal opportunity and protection from discrimination. That is why we must continue to vigorously enforce the Americans with Disabilities Act, which prohibits discrimination against blind and visually impaired people and those with other disabilities, and ensures them access to services that all other Americans take for granted.

To honor the numerous achievements of blind and visually impaired individuals, and to recognize the significance of the white cane as a symbol of their freedom and independence in our society, the Congress of the United States, by joint resolution approved October 6, 1964, has designated October 15 of each year as ''White Cane Safety Day,'' and authorized the President to issue a proclamation in observance of this commemoration.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 15, 1996, as White Cane Safety Day. I call upon the people of the United States, government officials, educators, and business leaders to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, in the year of our Lord nineteen hundred and ninety-six, and

of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 96–26836
Filed 10–16–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13020 of October 12, 1996

Amendment to Executive Order 12981

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and in order to take additional steps with respect to the national emergency described and declared in Executive Order 12924 of August 19, 1994, and continued on August 15, 1995, and August 14, 1996, in order to amend Executive Order 12981 as that order applies to the processing of applications for the export of any commercial communication satellites and any hot-section technologies for the development, production, and overhaul of commercial aircraft engines that are transferred from the United States Munitions List to the Commerce Control List pursuant to regulations issued by the Departments of Commerce and State after the effective date of this order, it is hereby ordered as follows:

Section 1. *Amendment of Executive Order 12981.* (a) Section 5(a)(3)(B) of Executive Order 12981 is amended to read as follows:

(B) The OC shall review all license applications on which the reviewing departments and agencies are not in agreement. The Chair of the OC shall consider the recommendations of the reviewing departments and agencies and inform them of his or her decision on any such matters within 14 days after the deadline for receiving department and agency recommendations. However, for license applications concerning commercial communication satellites and hot-section technologies for the development, production, and overhaul of commercial aircraft engines that are transferred from the United States Munitions List to the Commerce Control List pursuant to regulations issued by the Departments of Commerce and State after the date of this order, the Chair of the OC shall inform reviewing departments and agencies of the majority vote decision of the OC. As described below, any reviewing department or agency may appeal the decision of the Chair of the OC, or the majority vote decision of the OC in cases concerning the commercial communication satellites and hot-section technologies described above, to the Chair of the ACEP. In the absence of a timely appeal, the Chair's decision (or the majority vote decision in the case of license applications concerning the commercial communication satellites and hot-section technologies described above) will be final.

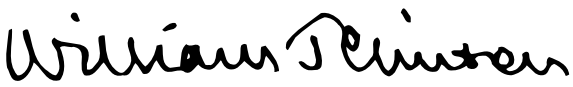
(b) Section 5(b)(1) of Executive Order 12981 is amended to read as follows:

(1) If any department or agency disagrees with a licensing determination of the Department of Commerce made through the Chair of the OC (or a majority vote decision of the OC in the case of license applications concerning the commercial communication satellites and the hot-section technologies described in section 5(a)(3)(B)), it may appeal the matter to the ACEP for resolution. A department or agency must appeal a matter within 5 days of such a decision. Appeals must be in writing from an official appointed by the President, by and with the advice and consent of the Senate, or an officer properly acting in such capacity, and must cite both the statutory and the regulatory bases for the appeal. The ACEP shall review all departments' and agencies' information and recommendations, and the Chair of the ACEP shall inform the reviewing departments and agencies of the majority vote decision of the ACEP within 11 days from the date of receiving notice of the appeal. Within 5 days of the majority vote decision, any dissenting department or agency may appeal the decision by submitting a letter from

the head of the department or agency to the Secretary in his or her capacity as the Chair of the Board. Such letter shall cite both the statutory and the regulatory bases for the appeal. Within the same 5-day period, the Secretary may call a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the majority vote decision of the ACEP shall be final.

Sec. 2. *Judicial Review.* This order is not intended to create, nor does it create, any rights to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 3. *Effective Date.* This order shall be effective immediately and shall remain in effect until terminated.



THE WHITE HOUSE,
October 12, 1996.

[FR Doc. 96–26837
Filed 10–16–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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Thursday, October 17, 1996

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 35

[FV–96–35–1IFR]

Regulations Issued Under the Export Grape and Plum Act; Exemption From Size Regulations for Black Corinth Grapes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule exempts the Black Corinth variety of grapes from the minimum bunch and berry size requirements issued for grapes under the Export Grape and Plum Act. This rule is designed to expand the markets for this variety of grapes and to increase their fresh utilization. This rule was recommended by the California Grape and Tree Fruit League after the proposal had been presented at industry meetings of growers and handlers.

DATES: Effective October 18, 1996; comments received by November 18, 1996, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724 or FAX (503) 326–7440; or William R. Addington, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720-2412 or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under authority of the Export Grape and Plum Act, as amended, (7 U.S.C. 591–599), hereinafter referred to as the ''Act.'' This rule amends ''Regulations Issued Under Authority of the Export Grape and Plum Act'' (7 Part 35).

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. In the United States there are approximately 250 handlers of table grapes that are subject to regulations under the authority of the Export Grape and Plum Act, and approximately 1300 grape producers. Small agricultural service firms, which include handlers of grapes, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of grape handlers and producers regulated under the Export Grape and Plum Act may be classified as small entities.

Section 35.11 of the ''Regulations issued under authority of the Export Grape and Plum Act'' establishes minimum size and quality requirements for export shipments of any variety of vinifera species table grapes. Currently, such grapes being shipped to Japan, Europe, or Greenland must meet a minimum grade of U.S. Fancy Table as specified in the U.S. Standards for Grades of Table Grapes (7 CFR part 51, §§ 51.880–51.992), except that the minimum bunch size shall be one-half pound. Table grapes shipped to countries other than Japan, Europe, Greenland, Canada, or Mexico must meet the requirements of U.S. No. 1 Table, except that the minimum bunch size shall be one-fourth pound. (Shipments to Canada and Mexico are currently not regulated under this part.) The U.S. Fancy Table grade includes a requirement for unlisted varieties (such as Black Corinth), that 90 percent of the berries, by count, in each bunch shall be at least ten-sixteenths of an inch in diameter. Similarly, the U.S. No. 1 Table grade includes a requirement for unlisted varieties (such as Black Corinth), that 75 percent of the berries, by count, shall be at least nine-sixteenths of an inch in diameter.

The Board of Directors of the California Grape and Tree Fruit League (Board), which represents a substantial portion of the fresh table grape industry, unanimously recommended that the Black Corinth variety of grapes be exempted from the minimum bunch and berry size requirements established for export shipments.

The Board advises that this change is needed because the Black Corinth variety (sometimes referred to as Zante Currants) are characteristically of high quality but of very small bunch and berry size. The small size prevents this variety from meeting the minimum size requirements established for export shipments.

Traditionally this variety of grapes had been dried for use as raisins. As oversupply conditions occurred in recent years for this variety, handlers within the industry were successful in developing fresh outlets. The variety received good consumer acceptance, primarily because of its unique size and sweetness.

Exempting the Black Corinth variety of grapes from the minimum bunch and berry size requirements for export shipments will enable handlers to further expand their markets and

increase fresh utilization. This change will improve the marketing of these varieties and increase returns to producers.

Based on available information, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities and that the action set forth will benefit producers and handlers of the Black Corinth variety of grapes. This action relaxes the requirements for small and large exporters exporting shipments of Black Corinth grapes by exempting that variety of grapes from the minimum bunch and berry size requirements.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This action relaxes the requirements for export shipments of Black Corinth grapes; (2) The Board unanimously recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) shipments of the Black Corinth variety of grapes have begun and this rule should apply to the entire season's shipments; (4) handlers and producers of the Black Corinth variety of grapes are aware of this rule and they need no additional time to comply with the relaxed requirements; and (5) this rule provides a 30-day comment period and any comments will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 35

Administrative practice and procedure, Exports, Grapes, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 35 is amended as follows:

PART 35—REGULATIONS ISSUED UNDER AUTHORITY OF THE EXPORT GRAPE AND PLUM ACT

1. The authority citation for 7 CFR part 35 continues to read as follows:

Authority: 7 U.S.C. 591–599.

2. In § 35.11, paragraphs (a) and (b) are amended by adding a sentence immediately following the existing text to read as follows:

§ 35.11 Minimum requirements.

* * * * *

(a) * * * The Black Corinth variety shall be exempt from bunch and berry size requirements.

(b) * * * The Black Corinth variety shall be exempt from bunch and berry size requirements.

* * * * *

Dated: October 10, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–26654 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 51

[Docket Number FV–95–306]

Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing inspection and certification for fresh fruits, vegetables and other products by increasing the fees charged for the inspection of these products at destination markets. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946.

EFFECTIVE DATE: November 10, 1996.

FOR FURTHER INFORMATION CONTACT: Robert J. Huttenlocker, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Room 2049 South Building, Washington, DC 20090–6456, (202) 720–0297.

SUPPLEMENTARY INFORMATION: This rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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

There are more than 2,000 users of Fresh Products Branch's destination market grading services. Some of these are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). This rule will raise the fees charged to businesses for voluntary inspection services for fresh fruits and vegetables. Even though fees will be raised, the increase is small (approximately five percent) and will not significantly affect these entities. These businesses are under no obligation to use these inspection services, and any decision on their part to discontinue the use of the services would not prevent them from marketing their products.

The Agricultural Marketing Service (AMS), has certified that this action will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, (5 U.S.C. 601). The final rule reflects certain fee increases needed to recover the costs of inspection services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946.

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

The AMA authorizes official inspection, grading, and certification on a user-fee basis, of fresh fruits, vegetables, and other products such as raw nuts, Christmas trees, and flowers. The AMA provides that reasonable fees be collected from the user of the program services to cover, as nearly as practicable, the costs of services rendered. This final rule will amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Employee salaries and benefits are major program costs that account for approximately 86 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 3.09 to 6.25 percent depending on locality, effective January 1995, has materially affected program costs. Another general and locality salary increase, ranging from 2.39 to 2.87 percent depending upon locality (amounting to approximately $253,000), was effective January 1996. Further, since FY 94, the costs associated with the development of U.S. grade standards have been and will continue to be covered from user fee revenues (prior to this, these costs were funded by Federal appropriation). Standardization activities increase the cost of this program by approximately $100,000 per year.

While a concerted effort to cut costs resulted in overhead savings of $350,000 in FY 95 over FY 94, the last

fee increase of June 1994 did not result in the collection of enough additional revenue to cover all these increases and still maintain an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 407.1) and principles of prudent financial management. Projected FY 96 revenues for market inspection are $12.6 mil with costs projected at $11.6 mil and a reserve of $3.1 mil. However, the Fresh Products Branch (FPB) trust fund reserve balance for the market program is approximately $900,000 under the desired level of $4 mil. Further action is necessary to meet rising costs and maintain adequate reserve balances. This action will assist in moving the FPB trust fund toward a more adequate level and will result in an estimated $600,000 in additional revenues per year.

A notice of proposed rulemaking was published in the Federal Register (61 FR 24247) on May 14, 1996, with a 60 day comment period. The comment period closed July 15, 1996. Interested persons were invited to participate in this rulemaking by submitting written comments on the proposal to AMS. Two comments were received regarding this rulemaking.

One comment was received by a State agency with which AMS has a cooperative agreement for providing official certification in that State. The comment was in favor of the increase and suggested that an additional increase may be appropriate for additional lots of the same product. While this option was considered, the proposed fee increases should be sufficient to meet the current financial needs of the program. Further, an effort was made to avoid increases which would be unnecessarily burdensome on the industry.

The second comment was received from an industry association of receivers. They support the proposed increase, provided that ''* * * the Fresh Products Branch improve performance with respect to inspection process, issuing certificates, and reduce the period of time between the inspection request and the time that the inspection is performed.'' FPB has responded to industry's concerns relating to the timeliness and efficiency of inspections by developing and implementing analytical procedures for assessing workload at various market offices (i.e., inspection points). Information obtained during these analyses is being used to audit staffing levels at the markets to ensure that inspection workload is being effectively managed. The industry association also suggests ''* * * that a committee composed of government officials, terminal market receivers and other interested persons should be created to discuss these issues, in order to realize the highest return on the fees paid by the perishable industry for inspection services.'' FPB officials routinely interact with industry participants to discuss alternatives for improving inspection services. AMS officials frequently meet to discuss industry's recommendations and improvements are implemented where appropriate.

In light of the continuing need to maintain this AMS grading program on a financially sound basis, the Agency has decided to proceed with the fee increase as set forth in the proposal.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because the fiscal year 1996 reserve balance of the program's trust fund is projected to be approximately $1 million under the desired level necessary to ensure the program's fiscal viability and the effective date will correspond to the first available billing cycle.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) For products in quantities of 51 or more packages:

(i) Quality and condition inspection of 1 to 4 products unloaded from the same conveyance:

(A) $78 for over a half carlot equivalent of an individual product.

(B) $65 for a half carlot equivalent or less of an individual product.

(C) $13 for each additional lot of the same product.

(ii) Condition only inspection of 1 to 4 products unloaded from the same conveyance:

(A) $65 for over a half carlot equivalent of an individual product.

(B) $60 for a half carlot equivalent or less of an individual product.

(C) $13 for each additional lot of the same product.

(iii) Quality and condition inspection and/or condition only inspection of 5 or more products unloaded from the same conveyance:

(A) $277 for the first 5 products.

(B) $39 for each additional product.

(C) $13 for each additional lot of any of the same product.

(2) For quality and condition inspection and/or condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $39 for each individual product.

(ii) $13 for each additional lot of any of the same product.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) For each package inspected according to the following rates:

(i) 1 cent per package weighing less than 15 pounds;

(ii) 2 cents per package weighing 15 to 29 pounds; and,

(iii) 3 cents per package weighing 30 or more pounds.

(2) $13 for each additional lot of any of the same product.

(3) A minimum charge of $78 for each product inspected.

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dockside, the car-lot fees in § 51.38(a) shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in the preceding paragraphs, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $39 an hour: Provided, that:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections;

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee.

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to

conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $19.50 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: October 10, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–26653 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270, 275, 285, and 295

[T.D. 384]

Manufacture of Cigarette Papers and Tubes and Recodification of Regulations Covering Manufacture of Tobacco Products and Cigarette Papers and Tubes (88D001)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: ATF is revising and recodifying the regulations governing the operations of cigarette papers and tubes manufacturers. These revisions consist of a clear definition of the term ''set,'' as such term is applied to cigarette papers. This term is clearly defined in ATF Ruling 81–2, A.T.F.Q.B. 1981–3 75, and is being incorporated in this final rule to provide its ready reference. We have also eliminated obsolete terms and updated the regulations through the use of modernized language. ATF believes that these revisions will clarify requirements, thus simplifying compliance and relieving some regulatory burden on the industry.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Room 5000, 650 Massachusetts Avenue NW, Washington, DC 20226; (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, President Clinton announced a regulatory reform initiative. As part of this initiative, each Federal agency was instructed to conduct a page by page review of all agency regulations to identify those regulations which are obsolete or burdensome and those regulations whose goals could be better achieved through the private sector, self-regulation or state and local governments. In cases where the agency's review disclosed regulations which should be revised or eliminated, the agency was instructed to propose changes to its regulations as soon as possible.

The Bureau completed the page by page review of all regulations as directed by the President. In addition, on April 13, 1995, the Bureau published a notice in the Federal Register requesting comments from the public regarding which ATF regulations could be improved or eliminated. As a result of both the Bureau's analysis of its regulations and the public comments received, a number of regulatory initiatives were developed which are intended to accomplish the President's goals. However, no public comments were received on part 285. This final rule implements one of the regulatory initiatives identified by ATF personnel: to revise and recodify the regulations governing the operations of cigarette papers and tubes manufacturers from part 285 into 27 CFR part 270, subpart K. This consolidation in one part of all manufacturing regulations relating to tobacco products and cigarette papers and tubes is consistent with the existing consolidated approach in part 275 on the importation of these items.

Definitions

The Bureau held in ATF Ruling 81–2 that any packaging intended for delivery to the consumer as a unit which contains more than 25 cigarette papers is taxable. The definition of the term ''sets'' is being added to the definitions in § 270.11. ATF Ruling 81–2 is therefore obsolete since its provisions are covered by these regulations.

Subpart K

Subpart K is added to part 270 and contains separate undesignated center headings for the taxation of cigarette papers and cigarette tubes, special (occupational) tax provisions, general administrative provisions, qualification requirements for manufacturers, changes subsequent to original qualification of manufacturers, bonds and extensions of coverage of bonds, operations by manufacturers, discontinuance of operations by manufacturers, and claims. Referring the reader to this material by means of the undesignated center headings will offer a more convenient method of locating this information. As a result of these changes, references to part 285 contained in parts 275 and 295 have been amended to references to part 270.

Bonds and Extensions of Coverage of Bonds

Section 270.407 in subpart K has been amended to include the title and new number of the ''Extension of Coverage of Bond'' form, ATF Form 2105 (5000.7).

Operations by Manufacturers

The Records, Reports and Inventory sections (§§ 270.421–270.434) of amended subpart K have also been amended to include new form numbers. To assist the industry in the transition to the new numbering system, the old form numbers will remain in these regulations. However, immediately after the old form number, the new number will appear enclosed in parentheses. These amendments do not make any substantive changes and are only intended to improve the clarity of Title 27 CFR or relieve regulatory requirements.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no new requirement to collect information is imposed. This final rule only transfers 27 CFR part 285 to 27 CFR subpart K.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not

required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small businesses in accordance with 26 U.S.C. 7805(f).

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedures Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is found to be unnecessary and contrary to the public interest to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarity it is found to be unnecessary and contrary to the public interest to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal drafter of this document is Clifford A. Mullen, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations (Government agencies), Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

27 CFR Part 275

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Claims, Electronic fund transfer, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, (Government agencies), Cigarette papers and tubes, Cigars, Cigarettes, Claims, Electronic fund transfer, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 295

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Excise taxes, Labeling, Packaging and containers, Tobacco products.

Authority and Issuance

Accordingly, ATF is amending Title 27 of the Code of Federal Regulations as follows:

Sec. A. Title 27 CFR part 270 is amended as follows:

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

Paragraph 1. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 270.1 is revised to read as follows:

§ 270.1 Manufacture of tobacco products and cigarette papers and tubes.

This part contains regulations relating to the manufacture of tobacco products and cigarette papers and tubes; the payment by manufacturers of tobacco products and cigarette papers and tubes of internal revenue taxes imposed by 26 U.S.C. chapter 52; and the qualification of and operations by manufacturers of tobacco products.

Par. 3. Section 270.11 is amended by adding and revising the following definitions:

§ 270.11 Meaning of terms.

* * * * *

Cigarette paper. Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

Cigarette papers. Taxable books or sets of cigarette papers, i.e., books or sets of cigarette papers containing more than 25 papers each.

Cigarette tube. Cigarette paper made into a hollow cylinder for use in making cigarettes.

* * * * *

Factory. The premises of a manufacturer of tobacco products as described in his permit issued under 26 U.S.C. chapter 52, or the premises of a manufacturer of cigarette papers and tubes on which such business is conducted.

* * * * *

Manufacturer of cigarette papers and tubes. Any person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for personal use or consumption.

* * * * *

Package. The immediate container in which tobacco products or cigarette papers or tubes are put up in by the manufacturer and offered for sale or delivery to the consumer.

* * * * *

Removal or remove. The removal of tobacco products or cigarette papers or tubes from the factory or release from customs custody, including the smuggling of other unlawful importation of such articles into the United States.

* * * * *

Sets. Any collection, grouping, or packaging of cigarette papers made up by any person for delivery to the consumer as a unit.

* * * * *

Par. 4. Subpart K is added to read as follows:

Subpart K—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

Taxes

Sec.
270.351 Cigarette papers.
270.352 Cigarette tubes.
270.353 Persons liable for tax.
270.354 Determination of tax and method of payment.
270.355 Return of manufacturer.
270.356 Adjustments in the return of manufacturer.
270.357 Payment of tax by electronic fund transfer.
270.358 Assessment.
270.359 Employer identification number.
270.360 Application for employer identification number.
270.361 Execution and filing of Form SS–4.

Special (Occupational) Taxes

270.371 Liability for special tax.
270.372 Rate of special tax.
270.373 Special tax returns.

270.374 Issuance, distribution, and examination of special tax stamps.
270.375 Changes in special tax stamps.

General

270.382 Authority of ATF officers to enter premises.
270.383 Interference with administration.
270.384 Disposal of forfeited, condemned, and abandoned cigarette papers and tubes.
270.385 Alternate methods or procedures.
270.386 Emergency variations from requirements.
270.387 Penalties and forfeitures.

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Original Qualifications

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Changes After Original Qualification

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270.403 Deposit of securities in lieu of corporate surety.
270.404 Amount of bond.
270.405 Strengthening bond.
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270.407 Extension of coverage of bond.
270.408 Approval of bond and extension of coverage of bond.
270.409 Termination of liability of surety under bond.
270.410 Release of pledged securities.

Operations by Manufacturers

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270.421 General.

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270.424 Monthly.
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270.431 General.
270.432 Opening.
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Document Retention

270.435 General.

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270.441 General.

Miscellaneous Operations

270.451 Transfer in bond.
270.452 Release from customs custody.
270.453 Use of the United States.
270.454 Removal for export purposes.

Permanent Discontinuance of Business

270.461 Discontinuance of operations.

Claims by Manufacturers

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270.471 Abatement.
270.472 Credit or refund.
270.474 Remission.

Lost or Destroyed

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Withdrawn From the Market

270.476 Action by claimant.
270.477 Action by regional director (compliance).
270.478 Disposition of cigarette papers and tubes and schedule.

§ 270.351 Cigarette papers.

On each book or set of cigarette papers containing more than 25 papers, manufactured in or imported into the United States, the following taxes are imposed by law:

(a) Cigarette papers removed before January 1, 1991, ½ cent for each 50 papers or fractional part thereof.

(b) Cigarette papers removed on or after January 1, 1991, and before January 1, 1993, 0.625 cent for each 50 papers or fractional part thereof.

(c) Cigarette papers removed on or after January 1, 1993, 0.75 cent for each 50 papers or fractional part thereof.

(d) Where cigarette papers measure more than 6½ inches in length, they shall be taxable at the above rates, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.352 Cigarette tubes.

On cigarette tubes, manufactured in or imported into the United States, the following tax is imposed by law for each 50 tubes or fractional part thereof:

(a) Cigarette tubes removed before January 1, 1991, 1 cent.

(b) Cigarette tubes removed on or after January 1, 1991 and before January 1, 1993, 1.25 cents.

(c) Cigarette tubes removed on or after January 1, 1993, 1.5 cents.

(d) Where cigarette tubes measure more than 6½ inches in length, they shall be taxable at the above rates, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.353 Persons liable for tax.

The manufacturer of cigarette papers and tubes shall be liable for the taxes imposed on such articles by 26 U.S.C. 5701. When a manufacturer of cigarette papers and tubes transfers such papers and tubes without payment of tax, pursuant to 26 U.S.C. 5704 to the bonded premises of another such manufacturer, a manufacturer of tobacco products, or an export warehouse proprietor, the transferee shall become liable for the tax upon receipt of such papers and tubes and the transferor shall thereupon be relieved of liability for the tax. When cigarette papers and tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of such papers and tubes or a manufacturer of tobacco products, the transferee shall become liable for the tax on the papers and tubes upon release from customs custody. Any person who possesses cigarette papers and tubes in violation of 26 U.S.C. 5751(a) (1) or (2), shall be liable for a tax equal to the rate of tax applicable to such articles.

(72 Stat. 1417, 1424; 26 U.S.C. 5703, 5751)

§ 270.354 Determination of tax and method of payment.

Except for removals without payment of tax and transfers in bond, as authorized by law, no cigarette papers and tubes shall be removed until the taxes imposed by section 5701, I.R.C., have been determined. The payment of taxes on cigarette papers and tubes which are removed on determination of tax shall be made by return in accordance with the provisions of this subpart.

(72 Stat. 1417; 26 U.S.C. 5703)

§ 270.355 Return of manufacturer.

(a) *Requirement for filing.* A manufacturer of cigarette papers and tubes shall file, for each factory, a semimonthly tax return on ATF Form 5000.24. A return shall be filed for each semimonthly return period regardless of whether cigarette papers and tubes were removed subject to tax or whether tax is due for that particular return period.

(b) *Waiver from filing.* The manufacturer need not file a return for each semimonthly return period if:

(1) Cigarette papers and tubes were not removed subject to tax during the period, and

(2) The regional director (compliance) has granted a waiver from filing in response to a written request from the manufacturer.

(c) *Semimonthly return periods.* Except as provided by paragraph (g) of this section, semimonthly return periods shall run from the first day of the month through the 15th day of the month, and from the 16th day of the month through the last day of the month.

(d) *Preparation and filing.* The return shall be executed and filed with ATF in accordance with the instructions on the form.

(e) *Remittance of tax.* Except as provided in § 270.357, remittance of the tax, if any, shall accompany the return.

(f) *Time for filing.* Except as provided by paragraph (g) of this section, for each

semimonthly return period, the return shall be filed not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday or legal holiday.

(g) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) Except as provided in paragraph (g)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 270.357, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (g)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (g)(2) of this section, if the amount paid no later than September 28 is not less than two-thirds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26, as applicable, falls on a Saturday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(Approved by the Office of Management and Budget under Control Number 1512–0467).

§ 270.356 Adjustments in the return of manufacturer.

Adjustments may be made in Schedules A and B of the manufacturer's semimonthly tax return, ATF Form 5000.24, as provided in this section. Schedule A of the return will be used where an unintentional error in a previous return resulted in an underpayment of tax. Schedule B of the return will be used where an unintentional error in a previous return resulted in an overpayment of tax, or where notice has been received from the regional director (compliance) that a claim for allowance of tax has been approved. In the case of an overpayment, the manufacturer shall have the option of filing a claim on ATF Form 2635 (5620.8) for refund or taking credit in Schedule B of the return, both subject to the period of limitations prescribed in 26 U.S.C. 6511. Any adjustment made in a return must be fully explained in the appropriate schedule or in a statement attached to and made a part of the return in which such adjustment is made.

(72 Stat. 1417, 68A Stat. 791; 26 U.S.C. 5703, 6402)

§ 270.357 Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five millions dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 275 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on tobacco products, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on tobacco products, cigarette papers, and cigarette tubes in any other form of remittance, as authorized in § 270.355, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including tobacco products, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR §§ 1.563–1 through 1.1563–4. Also, the rules for a ''controlled group of corporations'' apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT shall make a separate EFT remittance and file a separate return, ATF Form 5000.24, for each factory from which cigarette papers or cigarette tubes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 275 of this chapter during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Department of the Treasury's General Account or the Federal Reserve Bank of New York as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 270.355. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 275 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 270.355. Upon filing the first return on

which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to ATF Form 5000.24, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

c. *Remittance.* (1) Each taxpayer shall show on the return, ATF Form 5000.24, information about remitting the tax for that return period by EFT and shall file the return with ATF, in accordance with the instructions of ATF Form 5000.24.

(2) Remittances shall be considered as made when the taxpayment by EFT is received by the Treasury Account. For purposes of this section, a taxpayment by EFT shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the taxpayer directs the bank to effect an EFT message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to make a taxpayment by EFT.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an AFT Procedure entitled Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Approved by the Office of Management and Budget under control number 1512–0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85–859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

§ 270.358 Assessment.

Whenever any person required by law to pay tax on cigarette papers and tubes fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in 26 U.S.C. 6501. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to show cause against assessment. The person will be allowed 45 days from the date of such notice to show cause, in writing, against such assessment.

(72 Stat. 1417; 26 U.S.C. 5703)

§ 270.359 Employer identification number.

The employer identification number (EIN) (defined at 26 CFR 301.7701–12) of a manufacturer of cigarette papers and/or tubes who has been assigned such a number shall be shown on each semimonthly tax return, ATF Form 5000.24, and special tax return (including amended returns), ATF Form 5630.5, filed under this subpart. Failure of the taxpayer to include the EIN on ATF Form 5000.24 may result in assertion and collection of the penalty specified in § 70.113 of this chapter. Failure of the taxpayer to include the EIN on ATF Form 5630.5 may result in the imposition of the penalty specified in 27 CFR 70.113 of this chapter.

(75 Stat. 828; 26 U.S.C. 6109, 6676)

§ 270.360 Application for employer identification number.

Each manufacturer of cigarette papers and tubes who has neither secured an EIN nor made application therefor shall file an application on IRS Form SS–4. IRS Form SS–4 may be obtained from any service center director or from any district director. Such application shall be filed on or before the seventh day after the date on which any tax return under this subpart is filed. Each manufacturer shall make application for and shall be assigned only one EIN for all internal revenue purposes.

(75 Stat. 828; 26 U.S.C. 6109)

§ 270.361 Execution and filing of Form SS–4.

The application on IRS form SS–4, together with any supplementary statement, shall be prepared in accordance with the applicable form, instructions, and regulations, and the data called for shall be set forth fully and clearly. The application shall be filed with the service center director serving the internal revenue district where the applicant is required to file returns under this subpart, except that hand-carried applications may be filed with the district director of any such district as provided for in 26 CFR § 301.6091–1. The application shall be signed by:

(a) the individual if the person is an individual;

(b) the president, vice president, or other principal officer if the person is a corporation;

(c) a responsible and duly authorized member or officer having knowledge of its affairs if the person is a partnership or other unincorporated organization; or

(d) the fiduciary if the person is a trust or estate.

(75 Stat. 828; 26 U.S.C. 6109)

Special (Occupational) Taxes

§ 270.371 Liability for special tax.

(a) *Manufacturer of cigarette papers and tubes.* Every manufacturer of cigarette papers and tubes shall pay a special (occupational) tax at a rate specified by § 270.372 of this part. The tax shall be paid on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Each place of business taxable.* A manufacturer of cigarette papers and tubes incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 270.372 Rate of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(2) imposes a special tax of $1,000 per year on every manufacturer of cigarette papers and tubes.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of $500 per year with respect to any manufacturer of cigarette papers and tubes whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 270.371 relates) are less than $500,000. The ''taxable year'' to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who

commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a ''controlled group''; in that case the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. ''Controlled group'' means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4. Also, the rules for a ''controlled group of corporations'' apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 270.373 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on ATF Form 5630.5 shall be provided including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see §§ 270.359–361).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. ''Owner of the business'' shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.*

A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by State, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 270.371.

(d) *Signing of ATF Forms 5630.5.*—(1) *Ordinary returns.* The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as ''individual owner,'' ''member of firm,'' or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

§ 270.374 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 270.373(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5142, 5146, 6806)

§ 270.375 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the manufacturer shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The manufacturer shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship.*—(1) *General.* If there is a change in the proprietorship of a cigarette papers and tubes factory, the successor shall pay a

new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which the successor began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the manufacturer shall within 30 days after the change, file with ATF an amended special tax return covering the new location. The manufacturer shall attach the special tax stamp or stamps for endorsement of the change in location. No new special tax is required to be paid. However, if the manufacturer does not file the amended return within 30 days, the manufacturer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

General

§ 270.382 Authority of ATF officers to enter premises.

Any ATF officer may enter in the daytime any premises where cigarette papers and tubes are produced or kept, so far as it may be necessary for the purpose of examining such articles. When such premises are open at night, any ATF officer may enter them, while so open, in the performance of his or her official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any ATF officer or permit any AFT officer to examine such cigarette papers and tubes shall be liable to the penalties prescribed by law for the offense.

(68A Stat. 872; 903 26 U.S.C. 7342, 7606)

§ 270.383 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this subpart, or endeavors to intimidate or impede any ATF officer acting in an official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United States in connection with a violation or intended violation of this subpart, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

§ 270.384 Disposal of forfeited, condemned, and abandoned cigarette papers and tubes.

Forfeited, condemned, or abandoned cigarette papers or tubes in the custody of a Federal, State, or local officer upon which the Federal tax has not been paid shall not be sold or caused to be sold for consumption in the United States if, in the opinion of the officer, the sale of such papers and tubes will not bring a price equal to the tax due and payable, and the expenses incident to the sale. Where the cigarette papers or tubes are not sold the officer may deliver them to a Federal or State institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such papers or tubes are sold, release by the officer having custody shall be made only after such papers and tubes are properly packaged and taxpaid. A receipt from the regional director (compliance) evidencing payment of tax on such papers or tubes shall be presented to the officer having custody of the articles, which tax shall be considered part of the sales price. Where cigarette papers or tubes which have been packaged under the provisions of part 295 of this chapter are to be released after payment of tax, the purchaser shall appropriately mark each package ''Federal Tax Paid (date)'' before the officer having custody of the papers or tubes releases them. However, the articles may be released without such marking of the packages if the purchaser is a qualified manufacturer of cigarette papers and tubes and does not intend to place such papers or tubes on the domestic market for taxable articles but will otherwise dispose of them. A written statement of notification of disposal by destruction or return to bond through claim for refund, shall be filed, in original only, with the officer having custody of the articles. In the case of cigarette papers and tubes forfeited under the internal revenue laws, the sale shall be subject to the provisions of part 72 of this chapter.

(68A Stat. 870, as amended, 72 Stat. 1425, as amended; 26 U.S.C. 7325, 5753)

§ 270.385 Alternate methods or procedures.

A manufacturer of cigarette papers and tubes, on specific approval by the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this subpart. The Director may approve an alternate method or procedure, subject to stated conditions, when the Director finds that—

(a) Good cause has been shown for the use of the alternate method or procedure,

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue, and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this subpart.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. A manufacturer who desires to employ an alternate method or procedure shall submit a written application, in triplicate, to the regional director (compliance) for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the revenue is jeopardized or the effective administration of this part is hindered. Any authorization of the Director under this section shall be retained as part of the manufacturer's record in accordance with this subpart.

§ 270.386 Emergency variations from requirements.

The Director may approve methods of operation other than as specified in this subpart, where it is determined that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications;

(b) Will not hinder the effective administration of this subpart; and

(c) Will not be contrary to any provision of law. Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions and limitations shall automatically terminate the authority for such variations and the manufacturer thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this subpart is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, the manufacturer shall submit a written application to do so (in triplicate) to the regional director (compliance) for transmittal to the Director. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. In accordance with this subpart, any authorization of the Director under this section shall be retained as part of the manufacturer's records.

§ 270.387 Penalties and forfeitures.

Anyone who fails to comply with the provisions of this subpart becomes liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, 5763)

Qualification Requirements for Manufacturers

Original Qualifications

§ 270.391 Persons required to qualify.

Every person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his or her own personal use or consumption, shall first qualify as a manufacturer of cigarette papers and tubes in accordance with the provisions of this subpart.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.392 Bond.

Every person, before commencing business as a manufacturer of cigarette papers and tubes, shall file a bond on ATF Form 2102 (5210.1). Such bond shall be filed in accordance with the applicable provisions of subpart G of this part and conditioned upon compliance with the provisions of 26 U.S.C. Chapter 52, and regulations thereunder, including, but not limited to, the timely payment of taxes imposed by such chapter and penalties and interest in connection therewith for which the manufacturer may become liable to the United States.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.393 Power of attorney.

If the bond or any other document required under this part is signed by an attorney in fact for an individual, partnership, association, company, or corporation, by one of the partners for a partnership, or by one of the members of an association, a power of attorney on ATF Form 1534 (5000.8) shall be furnished to the regional director (compliance). If such bond or other document is signed on behalf of a corporation by an officer thereof, it must be supported by duly authenticated extracts of the stockholders' meeting, by-laws, or directors' meeting authorizing such officer to execute such document for the corporation. ATF Form 5000.8 or support of authority does not have to be filed again with a regional director (compliance) where such form or support has previously been submitted to that regional director (compliance) and is still in effect.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.394 Notice of approval of bond.

If the bond required under this subpart is approved by the regional director (compliance), a number will be assigned to the factory of the manufacturer of cigarette papers and tubes for internal revenue purposes. The regional director (compliance) will immediately notify the manufacturer, in writing, of the bond approval, in order that the manufacturer may commence operations.

(72 Stat. 1421; 26 U.S.C. 5711)

Changes after Original Qualifications

§ 270.395 Change in name.

Where there is a change in the individual, trade, or corporate name of a manufacturer of cigarette papers and tubes, the manufacturer shall, within 30 days of the change, furnish the regional director (compliance) a written notice of such change.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.396 Change in proprietorship.

Where there is to be any change in proprietorship (including a change in the identity of the members of a partnership or association, but excluding any change in stock ownership in a corporation) of the business of a manufacturer of cigarette papers and tubes, the proposed successor shall, before commencing operations, qualify as a manufacturer of cigarette papers and tubes, in accordance with this part. If such manufacturer promptly files the required documentation with the regional director (compliance), an administrator, executor, receiver, trustee, assignee, or other fiduciary successor may liquidate the business without qualifying as a manufacturer. The manufacturer must promptly file with the regional director (compliance) a statement of the intent to liquidate and furnish a certified copy of the order of the court, or other pertinent documents. These documents must show the appointment and qualification of any administrator, executor, receiver, trustee, assignee, or other fiduciary, together with an extension of coverage of the predecessor's bond executed by the administrator, executor, receiver, trustee, assignee, or other fiduciary and the surety, in accordance with the provisions of § 270.407. The predecessor shall make a closing inventory and closing report in accordance with the provisions of §§ 270.434 and 270.426, respectively, and the successor shall make an opening inventory and opening report, in accordance with the provision of §§ 270.432 and 270.423, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5721, and 5722)

§ 270.397 Change in location.

Whenever a manufacturer of cigarette papers and tubes contemplates a change in location of a factory within the same region, the manufacturer shall, before commencing operations at the new location, file an extension of coverage of bond in accordance with the provisions of § 270.407. Whenever a manufacturer of cigarette papers and tubes contemplates changing the location of a factory to another region, the manufacturer shall, before commencing operations at the new location, qualify as a manufacturer in the new region, in accordance with the applicable provisions of this subpart, and make a closing inventory and closing report, in

accordance with the provisions of §§ 270.434 and 270.426, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5721, and 5722)

Bonds and Extensions of Coverage of Bonds

§ 270.401 Corporate surety.

(a) Surety bonds required by this subpart may be given only with corporate sureties holding certificates of authority from, and subject to any limitations prescribed by the Secretary of the Treasury as set forth in the current revision of Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies). The surety shall have no interest whatever in the business covered by the bond.

(b) Each bond and each extension of coverage of bond shall at the time of filing be accompanied by a power of attorney authorizing the agent or officer who executed the bond to so act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may, whenever deemed necessary, require additional evidence of the authority of the agent or officer to execute the bond or extension of coverage of bond. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed document, it shall be accompanied by a certificate of its validity.

(c) Treasury Department Circular No. 570 is published in the Federal Register annually as of the first workday in July. As they occur, interim revisions of the circular are published in the Federal Register. Copies may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, D.C. 20220.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (31 U.S.C. 9304, 9306); sec. 202. Pub. L. 85–859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

§ 270.402 Two or more corporate sureties.

A bond executed by two or more corporate sureties shall be the joint and several liability of the principal and the sureties. However, each corporate surety may limit its liability in terms upon the face of the bond in a definite, specific amount, which amount shall not exceed the limitations prescribed for such corporate surety by the Secretary, as set forth in the current revision of Treasury Department Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies). (See § 270.401(c)) When the sureties so limit their liability, the aggregate of such limited liabilities must equal the required amount of the bond.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (31 U.S.C. 9304, 9306); sec. 202. Pub. L. 85–859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

§ 270.403 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the manufacturer of cigarette papers and tubes may pledge and deposit, as security for the bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR Part 225—Acceptance of Bonds, Notes or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

(61 Stat. 650, 72 Stat. 1421, 31 U.S.C. 9301, 9303, 26 U.S.C. 5711, 5 U.S.C. 552(a) (80 Stat. 383, as amended))

§ 270.404 Amount of bond.

The amount of the bond of a manufacturer of cigarette papers and tubes shall be not less than the maximum amount of the tax liability on the cigarette papers and tubes manufactured in the factory, received without payment of tax from other factories, and released without payment of tax from customs custody as provided in § 270.452, during any month. In the case of a manufacturer commencing business, the production, receipts from other factories, and releases from customs custody, without payment of tax, shall be estimated for the purpose of this section. The amount of any such bond (or the total amount where strengthening bonds are filed) shall not exceed $20,000, nor be less than $1,000.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.405 Strengthening bond.

Where the regional director (compliance) determines that the amount of the bond, under which a manufacturer of cigarette papers and tubes is currently carrying on such business, no longer adequately protects the revenue, the regional director (compliance) may require the manufacturer to file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, in lieu of a superseding bond to cover the full liability on the basis of § 270.404. The regional director (compliance) shall refuse to approve any strengthening bond where any notation is made thereon which is intended or which may be construed as a release of any former bond, or as limiting the amount of either bond to less than its full amount.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.406 Superseding bond.

A manufacturer of cigarette papers and tubes shall file a new bond to supersede the current bond immediately when:

(a) The corporate surety on the current bond becomes insolvent,

(b) The regional director (compliance) approves a request from the surety of the current bond to terminate liability under the bond,

(c) Payment of any liability under a bond is made by the surety thereon, or

(d) The regional director (compliance) considers such a superseding bond necessary for the protection of the revenue.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.407 Extension of coverage of bond.

An extension of the coverage of bond filed under this subpart shall be manifested on ATF Form 2105 (5000.7), Extension of Coverage of Bond, by the manufacturer of cigarette papers and tubes and by the surety on the bond with the same formality and proof of authority as required for the execution of the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.408 Approval of bond and extension of coverage of bond.

No person shall commence operations under any bond, nor extend operations, until such person receives from the regional director (compliance) notice of approval of the bond or an appropriate extension of coverage of the bond required under this subpart. Upon receipt of an approved bond or extension of coverage of bond from the regional director (compliance), such bond or extension of coverage of bond shall be retained by the manufacturer of cigarette papers and tubes in factory and shall be made available for inspection by any ATF officer upon request.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.409 Termination of liability of surety under bond.

The liability of a surety on any bond required by this subpart shall be terminated only as to operations on and after the effective date of a superseding bond, or the date of approval of the discontinuance of operations by the manufacturer of cigarette papers and tubes, or otherwise in accordance with the termination provisions of the bond. The surety shall remain bound in

respect of any liability for unpaid taxes, penalties and interest, not in excess of the amount of the bond, incurred by the manufacturer while the bond is in force.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.410 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 270.403 shall be released only in accordance with the provisions of 31 CFR Part 225. Such securities will not be released by the regional director (compliance) until liability under the bond for which they were pledged has been terminated. When the regional director (compliance) is satisfied that they may be released, the regional director (compliance) shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the regional director (compliance) may extend the date of release for such additional length of time as is deemed necessary.

(61 Stat. 650, 72 Stat. 1421; 31 U.S.C. 9301, 9303; 26 U.S.C. 5711)

Operations By Manufacturers

Records

§ 270.421 General.

Every manufacturer of cigarette papers and tubes shall keep records of the daily operations and transactions, which shall reflect the date and number of books or sets of cigarette papers of each different numerical content and the date and number of cigarette tubes:

(a) Manufactured;

(b) Received, without payment of tax from another factory, an export warehouse, customs custody, or by withdrawal from the market;

(c) Removed subject to tax;

(d) Removed, without payment of tax, for export purposes, use of the transfer in bond pursuant to § 270.451; or

(e) Lost or destroyed.

The entries for each day in the records maintained or kept under this subpart will be considered timely if made by the close of the business day following that on which the operations or transactions occur. No particular form of records is prescribed, but the information required shall be readily ascertainable from the records kept.

(72 Stat. 1423; 26 U.S.C. 5741)

Reports

§ 270.422 General.

Every manufacturer of cigarette papers and tubes shall make a report, on ATF Form 2138 (5230.3), to the regional director (compliance), of the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes manufactured, received, removed, and lost or destroyed. The report shall be made at the times specified in this subpart and shall be made whether or not any operations or transactions occurred during the period covered by the report. A copy of each report shall be retained by the manufacturer in accordance with the provisions of this subpart.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.423 Opening.

An opening report, covering the period from the date of the opening inventory to the end of the month, shall be made on or before the 10th day following the end of the month in which the business was commenced.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.424 Monthly.

A report for each calendar month shall be made on or before the 20th day of the next succeeding month.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.425 Special.

A special report, covering the unreported period to the day preceding the date of any special inventory required by an ATF officer, shall be made with such inventory. Another report, covering the period from the date of the special inventory to the end of the month, shall be made on or before the 14th day following the end of the month in which the inventory was made.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.426 Closing.

A closing report, covering the period from the first of the month to the date of the closing inventory, shall be made with such inventory.

(72 Stat. 1422; 26 U.S.C. 5722)

Inventories

§ 270.431 General.

Every manufacturer of cigarette papers and tubes shall provide a true and accurate inventory, on ATF Form 2132 (5230.2), to the regional director (compliance), of the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes held at the times specified in this subpart. Such inventory shall be subject to verification by an ATF officer. A copy of each inventory shall be retained by the manufacturer in accordance with this subpart.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 270.432 Opening.

An opening inventory shall be made by the manufacturer of cigarette papers and tubes at the time of first commencing business.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 270.433 Special.

A special inventory shall be made by the manufacturer of cigarette papers and tubes when required by any ATF officer.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 270.434 Closing.

A closing inventory shall be made by the manufacturer of cigarette papers and tubes when a change in proprietorship occurs, or when the manufacturer changes location of the factory to another region, or concludes business. Where a change in proprietorship occurs, the closing inventory shall be made as of the day preceding the date of the opening inventory of the successor.

(72 Stat. 1422; 26 U.S.C. 5721)

Document Retention

§ 270.435 General.

All records and reports required to be kept or maintained under this subpart, including copies of authorizations, inventories, reports, returns, and claims filed with verified supporting schedules, shall be retained by the manufacturer for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be made available for inspection by any ATF officer upon request.

(72 Stat. 1423; 26 U.S.C. 5741)

Packages

§ 270.441 General.

All cigarette papers and tubes shall, before removal subject to tax, be put up by the manufacturer in packages which shall be of such construction as will securely contain the papers or tubes therein. No package of cigarette papers or tubes shall have contained therein, attached thereto, or stamped, marked, written, or printed thereon:

(a) Any certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery,

(b) Any indecent or immoral picture, print, or representation, or

(c) Any statement or indication that United States tax has been paid.

(72 Stat. 1422; 26 U.S.C. 5723)

Miscellaneous Operations

§ 270.451 Transfer in bond.

A manufacturer of cigarette papers and tubes may transfer such papers and tubes, under bond, without payment of tax, to the bonded premises of any manufacturer of cigarette papers and tubes, or to the bonded premises of a manufacturer of tobacco products solely for use in the manufacture of cigarettes. The transfer of cigarette papers and tubes, without payment of tax, to the bonded premises of an export warehouse proprietor shall be in accordance with the provisions of part 290 of this chapter.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

§ 270.452 Release from customs custody.

Cigarette papers and tubes which were made in the United States, exported, and subsequently returned to the United States, may be removed from customs custody for transfer to the premises of a manufacturer without payment of the internal revenue tax, upon compliance with part 275 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 270.453 Use of the United States.

A manufacturer of cigarette papers and tubes may remove cigarette papers and tubes covered under bond, without payment of tax, for use of the United States. Such removal shall be in accordance with the provisions of part 295 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 270.454 Removal for export purposes.

The removal of cigarette papers and tubes, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States, shall be in accordance with the provisions of part 290 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

Permanent Discontinuance of Business

§ 270.461 Discontinuance of operations.

Every manufacturer of cigarette papers and tubes who desires to discontinue operations and close out a factory shall dispose of all cigarette papers and tubes on hand, in accordance with this subpart, and make a closing inventory and closing report, in accordance with the provisions of §§ 270.434 and 270.426, respectively.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

Claims By Manufacturers

General

§ 270.471 Abatement.

A claim for abatement of the unpaid portion of the assessment of any tax on cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after the expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on ATF Form 2635 (5620.8), in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid, shall be filed with the regional director (compliance) for the region in which the tax or liability was assessed.

(68A Stat. 792, 6404)

§ 270.472 Allowance.

Relief from the payment of tax on cigarette papers and tubes may be extended to a manufacturer by allowance of the tax where the cigarette papers and tubes, after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by the manufacturer from the market. Any claim for allowance under this section shall be filed on ATF Form 2635 (5620.8) with the regional director (compliance) for the region in which the articles were removed, shall be executed under penalties and perjury and shall show the date the cigarette papers and tubes were removed from the factory. A claim relating to articles lost or destroyed shall be supported as prescribed in § 270.475. In the case of a claim relating to cigarette papers or tubes withdrawn from the market the schedule prescribed in § 270.476 shall be filed with the regional director (compliance) for the region in which the articles are assembled. The manufacturer may not anticipate allowance of a claim by making the adjusting entry in a tax return pending consideration and action on the claim. Cigarette papers and tubes to which such a claim relates must be shown as removed on determination of tax in the return covering the period during which such articles were so removed. Upon action on the claim by the regional director (compliance) a copy of ATF Form 2635 (5620.8) will be returned to the manufacturer as notice of such action. This copy of ATF Form 2635 (5620.8), with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the cigarette papers or tubes to which the claim relates is to be filed, the manufacturer may make an adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received after the filing of the return and taxpayment of the cigarette papers or tubes to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance.

(72 Stat. 1419, as amended, 26 U.S.C. 5705)

§ 270.473 Credit or refund.

The taxes paid on cigarette papers and tubes may be credited or refunded (without interest) to a manufacturer on proof satisfactory to the regional director (compliance) that the claimant manufacturer paid the tax on cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer, or withdrawn by the manufacturer from the market. Any claim for credit or refund under this section shall be prepared on ATF Form 2635 (5620.8), in duplicate. Claims shall include a statement that the tax imposed on cigarette papers and tubes by 26 U.S.C. 7652 or Chapter 52, was paid in respect to the cigarette papers or tubes covered by the claim, and that the articles were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. A claim for credit or refund relating to articles lost or destroyed shall be supported as prescribed in § 270.475, and a claim relating to articles withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in §§ 270.476, and 270.477. The original and one copy of ATF Form 2635 (5620.8), shall be filed with the regional director (compliance) for the region in which the tax was paid, or where the tax was paid in more than one region with the regional director (compliance) for any one of the regions in which the tax was paid. Upon action by the regional director (compliance) on a claim for credit, a copy of ATF Form 2635 (5620.8) will be returned to the manufacturer as notification of

allowance or disallowance of the claim or any part thereof. This copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When the manufacturer is notified of allowance of the claim for credit or any part thereof, the manufacturer shall make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance. The manufacturer may not anticipate allowance of a claim by taking credit on a tax return prior to consideration and action on such claim. The duplicate of a claim for refund or credit, with a copy of any verified supporting schedules, shall be retained by the manufacturer.

(72 Stat. 1419, as amended, 26 U.S.C. 5705)

§ 270.474 Remission.

Remission of the tax liability on cigarette papers and tubes may be extended to the manufacturer liable for the tax where cigarette papers and tubes in bond are lost (other than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where cigarette papers and tubes are so lost or destroyed the manufacturer shall report promptly such fact, and the circumstances, to the regional director (compliance) for the region in which the factory is located. If the manufacturer wishes to be relieved of the tax liability, a claim on ATF Form 2635 (5620.8), in duplicate, shall also be prepared, setting forth the nature, date, place, and extent of the loss or destruction. The original and one copy of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid, shall be filed with the regional director (compliance) for the region in which the factory is located. Upon action on the claim by the regional director (compliance), the copy of ATF Form 2635 (5620.8) will be returned to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1419, as amended, 26 U.S.C. 5707)

Lost or Destroyed

§ 270.475 Action by claimant.

Where cigarette papers and tubes are lost (other than by theft) or destroyed, by fire, casualty, or act of God, and the manufacturer desires to file claim under the provisions of § 270.472 or § 270.473, the manufacturer shall indicate on the claim the nature, date, and extent of such loss or destruction. The claim shall be accompanied by such evidence as necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid.

(72 Stat. 1419; 26 U.S.C. 5705)

Withdrawn From the Market.

§ 270.476 Action by Claimant.

Where cigarette papers and tubes are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 270.472 or § 270.473, the manufacturer shall assemble the articles in or adjacent to a factory if they are to be retained in or received into such factory, or at any suitable place if they are to be destroyed. The manufacturer shall group the articles according to the rate of tax applicable thereto, and shall prepare and submit a schedule of the articles, on ATF Form 3069 (5200.7) in accordance with the instructions, on the form. All copies of the schedule shall be forwarded to the regional director (compliance) for the region in which the articles are assembled.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 270.477 Action by regional director (compliance).

Upon receipt of a schedule of cigarette papers and tubes withdrawn from the market, the regional director (compliance) may assign an ATF officer to verify the schedule and supervise disposition of the cigarette papers and tubes, or may authorize the manufacturer to dispose of the articles without supervision by so stating on the original and one copy of the schedule returned to the manufacturer.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 270.478 Disposition of cigarette papers and tubes and schedule.

When so authorized, as evidenced by the regional director's (compliance) statement on the schedule, the manufacturer shall dispose of the cigarette papers and tubes as specified in the schedule. After the articles are disposed of, the manufacturer shall execute a certificate on both copies of the schedule received from the regional director (compliance), to show the disposition and the date of disposition of the articles. In connection with a claim for credit or refund, the manufacturer shall attach the original of the schedule to the claim for credit or refund, ATF Form 2635 (5620.8), filed under § 270.473. When an ATF officer is assigned to verify the schedule and supervise disposition of the cigarette papers and tubes, such officer shall, upon completion of the assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of the articles. In connection with a claim for allowance, the officer shall return one copy of the schedule to the manufacturer for the record, and in connection with a claim for credit or refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to the claim filed under § 270.473.

(72 Stat. 1419, as amended; 26 U.S.C. 26 U.S.C. 5705)

Sec. B. The regulations in 27 CFR part 275 are amended as follows:

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703–5705, 5708, 5722, 5723, 5741, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 275.63 [Amended]

Par. 2. Section 275.63(a) is amended by removing ''parts 270 and 285'' and adding ''part 270''.

§ 275.85 [Amended]

Par. 3. Section 275.85 concluding text is amended by removing ''part 270 and part 285'' and adding ''part 270''.

Par. 4. Section 275.85a(b) is amended by removing ''part 270 or 285'' and adding ''part 270''.

§ 275.86 [Amended]

Par. 5. Section 275.86 is amended by removing ''parts 270 and 285'' and adding ''part 270''.

§ 275.115 [Amended]

Par. 6. Section 275.115a (a)(1) and (b)(1) are amended by removing ''parts 270 and 285'' and adding ''part 270''.

§ 275.137 [Amended]

Par. 7. Section 275.137 introductory text is amended by removing ''parts 270 and 285'' and adding ''part 270''.

§ 275.140 [Amended]

Par. 8. Section 275.140 is amended by removing ''part 285'' and adding ''part 270''.

Sec. C. The regulations in 27 CFR part 285 are amended as follows:

PART 285—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

PART 285—[REMOVED AND RESERVED]

Paragraph 1. Part 285 is removed and reserved.

Sec. D. The regulations in 27 CFR part 295 are amended as follows:

PART 295—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX FOR USE OF THE UNITED STATES

Paragraph 1. The authority citation for part 295 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805; 44 U.S.C. 3504(h).

Par. 2. Section 295.34 is amended by removing the phrase ''or Part 285''.

Signed: June 10, 1996.

John W. Magaw,

Director.

Approved: July 29, 1996.

Dennis M. O'Donnell,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–26305 Filed 10–16–96; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Transfer Treaty Cases

AGENCY: United States Parole Commission, Dept. of Justice.

ACTION: Final rule; correction.

SUMMARY: The U.S. Parole Commission is correcting typographical errors in the final rule regarding the number of hearing examiners required to conduct a hearing for a prisoner transferred to the United States pursuant to treaty. The rule appeared in the Federal Register on July 25, 1996 (61 FR 144).

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD, 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: On July 25, 1996, the Parole Commission published a final rule regarding the procedures followed in cases involving prisoners who are transferred to the United States pursuant to treaty, to serve a sentence imposed in the transferring country. Prior to the rule change, the Commission's regulation required that special transferee hearings be conducted by panels of two hearing examiners. The rule was changed by reducing the number from two hearing examiners to one hearing examiner. The following correction is made to the final rule published on July 25, 1996 (61 FR 144).

1. The first sentence of § 2.62(h)(6) in the second column on page 38570 which reads, ''(6) The transferee shall be notified of the examiner's recommending findings of fact, and the examiner's recommended determination and reasons therefore, at the conclusion at the hearing. * * *'' is corrected to read as follows:

''(6) The transferee shall be notified of the examiner's recommended findings of fact, and the examiner's recommended determination and reasons therefore, at the conclusion of the hearing. * * *''

* * * * *

Dated: October 7, 1996.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 96–26656 Filed 10–16–96; 8:45 am]

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28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Transfer Treaty Prisoners

AGENCY: United States Parole Commission, Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending its regulations to extend the time within which the Commission normally conducts a hearing for a prisoner who is transferred to the United States to serve a foreign sentence. The extension is from four months to six months. This extension reflects the need for the preparation of postsentence reports supported by translations of foreign court documents, and for completion of other procedures (including a thorough prehearing assessment by Commission staff) prior to conducting a hearing to determine a release date and a period and conditions of supervised release. The Commission is also amending its regulations to permit the agency to render a determination without a hearing in the case of a transferee who is given a release date by the Bureau of Prisons that is less than six months from the date the transferee enters the United States. These are cases in which the time is too short for the Commission to prepare for, and conduct, an in-person hearing. The Commission must nonetheless discharge its statutory responsibility to place the transferee under a period and conditions of supervised release before the transferee is released from prison.

DATES: November 18, 1996. Comments must be submitted by December 16, 1996.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: When the Commission originally established its procedures for conducting transfer treaty hearings under 18 U.S.C. 4106A, four months from the date of the prisoner's arrival in the United States appeared to be an adequate time to have a postsentence report prepared, the views of the prisoner's representative submitted, the case reviewed by Commission staff, and for the prisoner to be given an in-person hearing. A more realistic time frame would now appear to be six months. For those cases in which foreign court documents need to be translated (a procedure that will increasingly be requested by the Commission) an extended time frame is a practical necessity. This extension will not prejudice those transferees who believe that they are qualified to receive an early release date from the Commission, because the amended rule will set forth the Commission's current procedure permitting the transferee to waive a hearing in order to be released from prison within 60 days.

A special problem is raised by transferees who, through the application of jail credits and/or service credits from the Bureau of Prisons, are scheduled for release from prison shortly after their arrival in the United States. For example, some nations do not award credit for jail time, which is awarded by the Bureau of Prisons in accordance with U.S. law as soon as the transferee is received into United States custody. The Commission has experienced a number of cases wherein a release date is established by the Bureau of Prisons that does not permit the Commission time to conduct an in-person hearing. Yet, 18 U.S.C. 4106A requires the Commission to establish both a release date and a period and conditions of supervised release. Accordingly, the Commission is amending its regulation to permit it to render this determination without conducting a hearing when the release date established by the Bureau of Prisons falls too soon for a hearing to be conducted under normal procedures. Even in cases wherein the transferee's immediate release is required, the

Bureau of Prisons will contact the Parole Commission for an emergency determination prior to release of the prisoner, and a determination will be entered the same day the prisoner is released. Otherwise, a *nunc pro tunc* order will be entered.

In order to avoid minor disputes over the period and conditions of supervised release becoming grounds for an appeal to a U.S. Court of Appeals, the amended regulation permits the Commission to act upon a petition for a more favorable decision within a 60-day deadline from the date the determination is issued.

Public comment is expressly invited, especially from those who practice before the Commission, both in regard to the specific amendments published today, and in regard to any improvements or modifications in the Commission's pre-hearing procedures in transfer treaty cases that might be advisable.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

The Interim Rule

Accordingly, the U.S. Parole Commission makes the following changes to 28 CFR Part 2:

(1) The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.62 [Amended]

(2) 28 CFR Part 2, § 2.62(e) is revised to read as follows:

§ 2.62 Prisoners transferred pursuant to treaty.

* * * * *

(e) *Special Transferee Hearing.* A special transferee hearing shall be conducted within 180 days from the transferee's entry into the United States, or as soon as is practicable following completion of the postsentence report along with any corrections or addendum to the report and appointment of counsel for an indigent transferee.

(1) *Waivers.* The transferee may waive the special transferee hearing on a form provided for that purpose, and the Commission may either: (A) set a release date that falls within 60 days of receipt of the waiver and establish a period and conditions of supervised release; or (B) reject the waiver and schedule a hearing.

(2) *Short-term Cases.* In the case of a transferee who has less than six months from the date of his entry into the United States to his release date as calculated by the Bureau of Prisons under 18 U.S.C. 4105, the Commission may, without conducting a hearing or awaiting a waiver, set a release date and a period and conditions of supervised release. In such cases, the period of supervised release shall not exceed the minimum necessary to satisfy the applicable sentencing guideline (but may extend to the full-term of the foreign sentence if such period is shorter than the minimum of applicable sentencing guideline). The transferee may petition the Commission for a more favorable decision within 60 days of the Commission's determination, and the Commission may act upon the petition regardless of whether or not the transferee has been released from prison.

* * * * *

Dated: October 10, 1996.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 96–26655 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 90 and 174

Revitalizing Base Closure Communities; Redesignation of Parts

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule amends subchapter G to identify base closure and realignment documents and redesignates part 90 on revitalizing base closure communities as part 174.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, 703–697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Parts 90 and 174

Community development, Environmental protection, Government employees, Homeless, Military personnel, Surplus Government property.

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR chapter I is amended as follows:

1. The heading of subchapter G is revised to read as follows:

Subchapter G—Closures and Realignment

PART 90—[REDESIGNATED AS] PART 174

2. Part 90 is redesignated as part 174 and added to subchapter G.

Dated: October 9, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–26381 Filed 10–16–96; 8:45 am]

BILLING CODE 5000–04–M

Base Closure Communities; Redesignation of Parts

32 CFR Parts 91 and 175

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This administrative amendment is published to redesignate regulations on base closure communities in part 91 as part 175, to be included under the Closures and Realignment subchapter.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, 703–697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Parts 91 and 175

Community development, Environmental protection, Government employees, Homeless Military personnel, Surplus Government property.

PART 91—[REDESIGNATED AS] PART 175

Accordingly, 32 CFR part 91 is redesignated as part 175, added to subchapter G, and amended as follows:

1. The authority citation for newly redesignated part 175 continues to read as follows:

Authority: 10 U.S.C. 2687 note.

§ 175.1 [Amended]

2.–3. Section 175.1 is amended by revising ''part 90'' to read ''part 174''.

§ 175.6 [Amended]

4. Section 175.6(b) is amended by revising ''§ 90.5'' to read ''§ 174.5''.

§ 175.7 [Amended]

5. Section 175.7 is amended in paragraph (f)(1) by revising ''91.7(e)'' to read ''175.7(e)''.

Dated: October 9, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–26415 Filed 10–16–96; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5635–2]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Oak Grove Sanitary Landfill, Minnesota from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Oak Grove Sanitary Landfill 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 Minnesota have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Timothy Prendiville, Remedial Project Manager, Office of Superfund, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604, (312) 886–5122. The comprehensive information on the site is available at the local information repository located at: Oak Grove Township Hall, Cedar, MN. and the St. Francis Branch of the Anoka Public Library, St. Francis, MN. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. Address for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Oak Grove Sanitary Landfill , Minnesota . A Notice of Intent to Delete for this site was published in the Federal Register on July 29, 1996, at 61 FR 39383. The closing date for comments on the Notice of Intent to Delete was August 27, 1996. EPA received no comments and therefore has not prepared a Responsiveness Summary.

The 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. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. 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 record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 30, 1996.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region 5.

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 1 of appendix B to part 300 is amended by removing the Site ''Oak Grove Sanitary Landfill, Minnesota''.

[FR Doc. 96–26190 Filed 10–16–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[DA 96–1574]

Public Mobile Services; Non-Substantive Editorial Revisions

AGENCY: Federal Communications Commission.

ACTION: Corrections to final rules.

SUMMARY: This Order contains non-substantive corrections to various final rules included in Part 22 of the Commission's Rules on Public Mobile Services (47 CFR Part 22).

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Wireless Telecommunications Bureau, Commercial Wireless Division, (202) 418–0620.

SUPPLEMENTARY INFORMATION:

Background

This Order corrects clerical errors that currently appear in Part 22 of the Commission's Rules, 47 CFR Part 22. The affected sections are Section 22.99, 22.105, 22.317, 22.355, 22.357, 22.369, 22.409, 22.507, 22.621 and 22.509.

Need for Correction

As published, these final rule contains clerical errors that may prove to be misleading and are in need of clarification.

List of Subjects in 47 CFR Part 22

Communications common carriers, Communications equipment, Radio.

Correction of Publication

Part 22 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICES

The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, 309 and 332, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, 309 and 332, unless otherwise noted.

§ 22.99 [Amended]

2. In § 22.99, in the definition for the term ''Frequency'', remove the third occurrence of the word ''of''.

3. § 22.105 is amended by revising the first sentence of the introductory paragraph and Table B–1 to read as follows:

§ 22.105 Written applications, standard forms, microfiche, magnetic disks.

Except for authorizations granted under the emergency conditions set forth in section 308 of the Communications Act of 1934, as amended (47 U.S.C. 308), the FCC may

grant authorizations only upon written application (FCC Form 600) received by it. * * *

TABLE B–1.—STANDARD FORMS FOR THE PUBLIC MOBILE SERVICES

Purpose of filing	Form No.	Title of form
Application for renewal of authorization.	405	Application for Renewal of Station License.
Application for airborne mobile authorization.	409	Application for Airborne Mobile Radiotelephone Authorization.
Application for assignment of authorization.	430	Licensee Qualification Report.
Transmittal for Phase I cellular application.	464	Transmittal Sheet for Cellular Applications for Unserved Areas.
Transmittal for Phase II cellular application.	464–A	Transmittal Sheet for Phase 2 Cellular Applications for Unserved Areas.

TABLE B–1.—STANDARD FORMS FOR THE PUBLIC MOBILE SERVICES—Continued

Purpose of filing	Form No.	Title of form
Notification of completion of construction.	489	Notification of Commencement of Service or of Additional or Modified Facilities.
Notification of minor modification of station.		
Application for assignment of authorization.	490	Application for Assignment of Authorization or Consent to Transfer of Control of Licensee.
Application for consent to transfer of control.		
Application for new or modified station.	600	Application for Mobile Radio Service Authorization.
Major amendment to pending application.		
Application for partial assignment of authorization.		

* * * * *

§ 22.317 [Amended]

4. In § 22.317, remove the words ''Mobile Services Division, Common Carrier Bureau'', and add, in their place, the words ''Commercial Wireless Division, Wireless Telecommunications Bureau''.

5. § 22.355 is revised to read as follows:

§ 22.355 Frequency tolerance.

Except as otherwise provided in this part, the carrier frequency of each transmitter in the Public Mobile Services must be maintained within the tolerances given in Table C–1 of this section.

TABLE C–1.—FREQUENCY TOLERANCE FOR TRANSMITTERS IN THE PUBLIC MOBILE SERVICES

Frequency range (MHz)	Base, fixed (ppm)	Mobile >3 watts (ppm)	Mobile <=3 watts (ppm)
25 to 50	20.0	20.0	50.0
50 to 450	5.0	5.0	50.0
450 to 512	2.5	5.0	5.0
821 to 896	1.5	2.5	2.5
928 to 929	5.0	n/a	n/a
929 to 960	1.5	n/a	n/a
2110 to 2220	10.0	n/a	n/a

6. Section 22.357 is revised to read as follows:

§ 22.357 Emission types.

Any authorized station in the Public Mobile Services may transmit any emission type provided that the resulting emission complies with the appropriate emission mask. See §§ 22.359, 22.861 and 22.917.

§ 22.369 [Amended]

7. In § 22.369, paragraph (c)(2), remove the symbol ''†'' and add, in its place, the Greek letter ''π''.

§ 22.409 [Amended]

8. In § 22.409, paragraph (h)(2), remove the words ''paragraph (e)'' and add, in their place, the words ''paragraph (f)''.

§ 22.507 [Amended]

9. Section 22.507 is amended by removing the Note.

§ 22.621 [Amended]

10. In § 22.621, the introductory paragraph is amended by removing, under the heading ''(12.5 kHz bandwidth)'', in the second row of the second column, the entry for ''959.85625'' and adding, in its place, the entry ''959.86875''.

§ 22.509 [Amended]

11. In § 22.509, paragraph (c), remove the words ''See § 22.13(c)(4)(ii)'' and add, in their place, the words ''See § 22.131(c)(4)(ii).''

Federal Communications Commission

Michele C. Farquhar,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 96–26431 Filed 10–16–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 51

[CC Docket Nos. 96–98 and 95–185; FCC 96–378]

Implementation of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; Denial of petitions for stay of rules.

SUMMARY: The Federal Communications Commission here denies two petitions seeking a stay of the rules contained in

the Commission's *First Report and Order* implementing the Telecommunications Act of 1996. The Commission concluded that petitioners failed to meet the legal criteria required to obtain a stay of the rules. Denial of the petitions seeking a stay of the rules allows the implementation of the Telecommunications Act of 1996 to proceed without delay.

EFFECTIVE DATE: September 16, 1996.

FOR FURTHER INFORMATION CONTACT: David A. Konuch, 202–418–0199.

SUPPLEMENTARY INFORMATION:

Adopted: September 16, 1996
Released: September 17, 1996

I. Introduction

1. On August 1, 1996, the Commission adopted rules implementing the local competition provisions of the Telecommunications Act of 1996 (1996 Act). Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98, First Report and Order, FCC 96–325 (released August 8, 1996), 61 FR 45476 (August 29, 1996) (First Report and Order). On August 28, 1996, GTE Corporation (GTE) and the Southern New England Telephone Company (SNET) filed a joint motion for stay of the Commission's rules pending judicial review. Oppositions to the joint motion for stay were filed by the United States Department of Justice and 16 private parties. On September 6, 1996, after we received these oppositions, U S West, Inc. (''U S West'') filed a stay petition similar to that filed by GTE and SNET. The Competitive Telecommunications Association and ALTS filed oppositions to U S West's petition.

2. For the reasons set forth below, we deny the motions for stay.

II. Summary of the Motions and Oppositions

3. GTE and SNET assert that a petition for review of the Commission's *First Report and Order* is likely to succeed on the merits because the Commission has exceeded its statutory authority and has acted arbitrarily and capriciously in implementing provisions of the 1996 Act. In particular, GTE and SNET contend that the Commission lacks authority to establish national pricing standards for interconnection and unbundled network elements. GTE and SNET argue that, even if the Commission has such authority, the pricing standards in the *First Report and Order* would force incumbent LECs to offer interconnection, unbundled network elements, and resold services at below-cost rates, allegedly effecting an uncompensated taking in violation of the Fifth Amendment to the United States Constitution. GTE and SNET also maintain that the Commission has established default pricing proxies that are inconsistent with the 1996 Act and the cost study methodology the Commission adopted for use by state commissions. In addition, GTE and SNET assert that the ability of competitors to ''reassemble'' unbundled network elements nullifies the resale and exchange access provisions of the 1996 Act. Finally, GTE and SNET argue that the *First Report and Order* establishes a number of specific requirements with regard to resale and exchange access charges that conflict with express terms of the 1996 Act.

4. GTE and SNET contend that they will suffer irreparable harm in the absence of a stay because the Commission's rules will stifle the negotiation process and will require incumbent LECs to offer unbundled elements or services to competitors at below-cost prices. GTE and SNET argue that a stay will cause no harm to others because private negotiations and state-supervised arbitrations can proceed in the absence of Commission rules. GTE and SNET also assert that the public interest favors a stay because of the disruption to business plans that would result if the Court of Appeals reverses the *First Report and Order* and the Commission subsequently modifies its rules.

5. U S West agrees with SNET and GTE's arguments, but additionally claims that our default proxy prices, along with our misinterpretation of 47 U.S.C. 252(i), the 1996 Act's ''most favored nation'' provision, will impermissibly ''dictate'' the result of negotiations, as a practical matter. Section 252(i) of the 1996 Act provides that a ''local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.'' 47 U.S.C. 252(i). Section 252(i) is known as the 1996 Act's ''most favored nation'' provision, because it enables carriers to obtain any interconnection, service, or network element on terms as favorable as those contained in any state-commission-approved interconnection agreement.

6. In general, parties opposing grant of the stay motion contend that GTE's and SNET's motion does not satisfy the four factors that we must consider in deciding whether to stay one of our orders. These parties contend movants are unlikely to prevail on the merits of their claims; that movants will suffer no irreparable harm if a stay is not granted; that grant of a stay will harm third parties; and that the public interest does not favor the grant of a stay.

III. Discussion

7. Petitioners' motions do not justify relief under the four-part test for evaluating requests for interim relief. That test requires proponents of a stay to demonstrate: (1) That they are likely to prevail on the merits; (2) that they will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors the grant of a stay. See *Wisconsin Gas Co.* v. *FERC,* 758 F.2d 669, 673–74 (D.C. Cir. 1985); *Washington Metropolitan Area Transit Authority* v. *Holiday Tours, Inc.,* 559 F.2d 841, 843–43 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F.2d 921, 925 (D.C. Cir. 1958). As discussed below, we do not believe that petitioners have satisfied any, much less all, of these requirements.

A. Irreparable Harm

8. A concrete showing of irreparable harm is an essential factor in any request for a stay. '' 'The key word' '' in an analysis of irreparable harm is '' '*irreparable.*' '' ''[E]conomic loss does not, in and of itself, constitute irreparable harm.'' Also, because competitive harm is merely a type of economic loss, ''revenues and customers lost to competition which can be regained through competition are not irreparable.'' Moreover, even if the alleged harm is not fully remediable, the irreparable harm factor is not satisfied absent a demonstration that the harm is ''both certain and great; * * * actual and not theoretical.'' ''Bare allegations of what is likely to occur are of no value'' under this factor, because we ''must decide whether the harm will *in fact* occur.'' Petitioners' three different claims of harm absent a stay do not satisfy these exacting standards.

9. *First,* GTE and SNET argue specifically that they are harmed by our interpretation of the ''just and reasonable'' standard of 47 U.S.C. 251(c)(2) and (3) for the pricing of interconnection and unbundled network elements. They complain, in particular, that the pricing methodology adopted in the *First Report and Order* unconstitutionally prevents them from recovering the joint and common costs (hereinafter collectively referred to as ''common costs''), and the historical ''embedded'' costs of such offerings to competing carriers. *The First Report and*

Order generally uses the term ''common costs'' to refer to both joint and common costs. Such ''below-cost'' pricing of section 251 offerings, they claim, will result in unrecoverable lost revenues, customers, and goodwill, particularly if state regulators do not allow them to ''rebalance'' (raise) rates for certain retail services that allegedly have been subsidized in the past by the pricing regime that the section 251 offerings will erode.

10. These claims mischaracterize the *First Report and Order.* Contrary to GTE's and SNET's assertions, our pricing methodology does not require ''below-cost'' pricing. On the contrary, it affirmatively provides for the recovery of all the economic costs of providing interconnection and unbundled network elements, and includes a reasonable profit. We refer to the general pricing methodology we adopted as Total Element Long Run Incremental Cost or ''TELRIC''. As we explained, economic costs are forward-looking costs or, in other words, the costs that an efficient provider would incur to provide the service or facility. We also specifically provided that unbundled element prices shall include a ''normal profit.'' In mischaracterizing our pricing methodology as ''below-cost,'' GTE and SNET must be claiming that historical embedded costs are always greater than economic costs, and that sections 251 and 252 must be read to entitle them to recover historical costs even where those costs exceed economic costs. Both assertions are unfounded. Nothing in section 251 or 252 creates an entitlement for GTE, SNET and other incumbent LECs to assess rates for interconnection and unbundled network elements that are designed to recover historical costs that exceed economic costs. Economists generally agree that historical embedded costs are not the relevant costs in competitive markets, and would, in fact, interfere with the development of efficient competition. Moreover, GTE and SNET are simply wrong in claiming that the Commission's pricing methodology denies them an opportunity to recover common costs. We stated clearly in the *First Report and Order* that ''for the aggregate of all unbundled elements, incumbent LECs must be given a reasonable opportunity to recover their forward-looking common costs attributable to operating the wholesale network.''

11. Even accepting GTE's and SNET's reliance on historical costs, their contention that the *First Report and Order* requires below-cost pricing is speculative. In any given instance, forward-looking costs ''may be higher or lower than historical embedded costs.'' Thus, the claimed loss of revenues—which does not present a question of constitutional deprivation in any event—is premature because the actual revenues that GTE and SNET will receive will not be known until completion of the voluntary negotiations and state arbitration proceedings that will actually set interconnection and unbundled element prices. We expressly stated in the *First Report and Order* that ''[i]ncumbent LECs may seek relief from the Commission's pricing methodology if they provide specific information to show that the pricing methodology, as applied to them, will result in confiscatory rates.'' Moreover, as DOJ correctly notes in its Opposition at page 3, the Commission possesses discretion in ratemaking matters, so long as the rates that result are just. See, *e.g.*, *Duquesne Light Co.* v. *Barasch*, 488 U.S. 299 (1989) (in which the Court rejected a takings claim where a utility was denied recovery of a $34 million capital investment, prudent and reasonable when made, because the financial integrity of the company was not jeopardized). Speculation about anticipated lost revenues in the future does not approach, at this stage, a showing of irreparable harm.

12. *Second*, petitioners contend that they will be harmed by the application of the interim default proxy rates that the Commission adopted. This argument is fatally flawed in that there is no certainty that those proxies will ever be applied to petitioners. These proxies were established for use by the states if a state was not able to set prices based on economic cost studies consistent with our methodology within the statutory arbitration periods. If, as these carriers assert, the proxy rates are unreasonably below costs, they have every incentive, and possess the information necessary, to present credible economic cost studies to the relevant state commissions to allow the state commissions to set prices for interconnection and unbundled network elements that are based on actual cost studies, rather than by proxies. Their claims of harm thus lack the requisite certainty and concreteness for a stay. Further, as discussed below, the carriers' challenges to those proxies mischaracterize the Commission's action and are unfounded on the merits.

13. *Third*, petitioners argue that the Commission's rules unreasonably constrain both their ability to negotiate the terms of voluntary agreements with other telecommunications carriers that request interconnection or unbundled network elements, and the states' ability to arbitrate the terms of such agreements if voluntary negotiations fail. Quite apart from the fact that the statute directs the Commission to adopt implementing rules in 47 U.S.C. 251(d)(1), these allegations of harm also are too speculative to justify injunctive relief. Section 251(d)(1) provides that, ''[w]ithin 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.'' We also note that section 253(a) provides that ''[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.'' Further, section 253(d) provides that ''[i]f, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) [relating to the states' ability to take certain actions], the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.'' Our rules clearly do not prohibit voluntary negotiations between incumbent LECs and their potential competitors, as contemplated in 47 U.S.C. 252(a). Indeed, they facilitate them. Petitioners are free to negotiate agreements with other carriers upon any terms they choose so long as they are not discriminatory and are consistent with the public interest. Although we fully expect the existence of our rules to provide a context in which free negotiations can proceed consistent with the pro-competitive purposes of the 1996 Act, petitioners cannot plausibly suggest in view of the explicit mandate of 47 U.S.C. 251(d)(1) that they have a cognizable right to negotiate without any rules adopted by the FCC.

14. We also conclude that petitioners have not demonstrated that the FCC's decision to interpret the just and reasonable rate standard would necessarily harm them, as compared with a decision to allow states independently to interpret that standard in arbitration proceedings. To the extent that states might adopt different standards absent any FCC guidance, such standards could conceivably be either more or less favorable to incumbent local exchange carriers.

15. Finally, it is a meaningful response to all of the harms that petitioners allege that nothing in the

First Report and Order prevents incumbent local exchange carriers from taking steps substantially to protect themselves by seeking to insert into their voluntary agreements provisos that permit reformation of the terms of those agreements in the event that the order is overturned or modified pursuant to judicial review. Similarly, nothing in the order prevents states, in arbitrating such agreements, from imposing such provisos.

B. Harm to Others

16. Petitioners also have not proved that a grant of their motions would not harm others. As discussed more fully below (paras. 28–31), the ''stay'' they seek would not simply maintain the *status quo,* but rather would have a significant impact on whether potential new competitors currently involved in negotiations and state arbitration proceedings choose to enter local exchange and exchange access markets at this crucial time, and, if so, whether their entry would be pursuant to statutory standards as interpreted by the Commission, or some other standards. To the extent that petitioners claim that the Commission's interpretations burden them with lost revenues and competitive harm, other interpretations allowing them to charge new entrants higher rates or to impose upon them more restrictive terms likely would burden new entrants and, consequently, retard or even eliminate competitive entry. As between incumbent LECs and new entrants, the former are more likely to be able to repair the adverse consequences of any erroneous decision on whether to grant a stay.

17. Moreover, to the extent that petitioners argue not only that the Commission adopted an erroneous pricing standard, but also that the Commission erred by failing to leave the standard to individual states, the carriers are advocating a system that clearly would cause new entrants particular harm and might even discourage them from entering these markets. As we noted in the *First Report and Order,* efficient entry strategies in many cases require entry on a regional, rather than state-by-state, basis. The removal of national standards could severely impede, or at least increase the cost of, such strategies.

C. Public Interest

18. GTE and SNET assert that a stay would serve the public interest because it would leave interconnection negotiations to private parties, and arbitrations in the hands of state regulators, where Congress intended them to be. They also contend that ''progress toward competition will be gravely impaired'' in the absence of a stay because the Commission's rules will give potential competitors false signals that may ''encourage entry by companies that would not normally enter if they had known the true costs involved.'' GTE and SNET claim that this means that a stay is necessary to protect the public from such ''uneconomic entry'' and from the disruptions that would attend corrective actions if the Commission's rules were overturned. U S West additionally claims that the public interest will be harmed because the Commission's rules and ''inflexible prices'' will ''prevent carriers from negotiating interconnection agreements with each other on terms that are more advantageous than the defaults.''

19. Contrary to GTE's and SNET's argument that a stay is needed to avoid ''entry by companies that would not normally enter,'' a stay might discourage entry by some who have every reasonable qualification to compete and would do so under our rules. A stay in this crucial initial period for the development of local exchange and local access competition would not serve the public interest unless our rules were virtually certain to be set aside on review and the actions taken on interconnection requests in the meantime were irreversible. We believe that our rules correctly carry out the objectives of Congress in adopting section 251. Congress expressly mandated rulemaking by the Commission to implement effectively the new statutory requirements. Congress also made clear that time was of the essence, directing us to ''complete all actions necessary to establish [such] regulations'' by August 8, 1996. As explained more fully below (paras. 30–31), a stay of our rules would subvert Congress' plan to have such rules in place during arbitration proceedings. Moreover, as we emphasized in the First Report and Order, the rules we adopted under section 251 will have a significant impact on the implementation of other provisions of the 1996 Act. We noted, for example, that our 251 rules ''will help the states, the DOJ, and the FCC carry out their responsibilities under section 271, and assist BOCs in determining what steps must be taken to meet the requirements of section 271(c)(2)(B), the competitive checklist.'' Section 271 establishes the requirements that a BOC must satisfy in order to receive authorization to provide in-region interLATA telecommunications services. Section 271(c)(2)(B) sets forth a specific ''checklist'' of requirements that a BOC must meet as part of the authorization process.

20. As to any necessary corrections after the fact, we believe that agreements and arbitrations can take account of this possibility. As noted above (paragraph 15), agreements and arbitrations could include provisos calling for revisions if the Commission's rules should be struck down. The joint motion acknowledges that the agreements can be revised after the fact if the Commission's rules are upheld after a stay is granted; its assertion that such revisions would not work if a stay is denied and the rules later are struck down is implausible and unexplained.

21. We further reject U S West's argument that our rules will harm the public interest by providing carriers with insufficient flexibility to negotiate agreements. For the reasons set out in this Order and in the *First Report and Order,* we believe that our rules provide all carriers with a full and fair opportunity, pursuant to the requirements of the 1996 Act, voluntarily to negotiate interconnection agreements.

22. In summary on this point, the primary beneficiary of the competitive policies our rules were designed to implement is the public. We conclude that a stay would disserve the public interest profoundly by eliminating our rules from the process of negotiation and arbitration at the very most crucial time.

D. Likelihood of Success on the Merits

23. Because of the clear failure of petitioners to meet the irreparable harm, harm to others, and public interest requirements for obtaining a stay, we do not address specifically in this order all their claims that we exceeded our statutory authority or that we acted arbitrarily or capriciously. All the significant arguments raised by the petitioners were squarely addressed in the *First Report and Order.* We addressed issues concerning the Commission's authority under the 1996 Act to establish national pricing rules in section II.C. and II.D. of the order. We discussed the legal and economic bases for the establishment of the Commission's pricing methodology, including the Fifth Amendment takings issue and the justification for the default proxy ceilings and ranges, in section VII of the order. We addressed arguments about whether we should permit competitors to reassemble unbundled network elements, including possible effects on the resale provisions of the 1996 Act and our access charge rules, in sections V.H. and VII.B., respectively. In

section V.J., we set forth our rationale for including vertical features within the definition of unbundled local switching; and in sections IV.H., V.J., and VII.B., we discussed the compensation to incumbent LECs for modifications made to their networks to accommodate interconnection and unbundling. Finally, in section XIV.B of the *First Report and Order,* we addressed arguments regarding the rights of third parties to obtain ''any individual interconnection, service, or network element arrangement'' under section 252(i). We need not repeat those discussions in this order.

24. We will note, however that where the GTE and SNET address the merits of the *First Report and Order,* they often mischaracterize and distort the import of our analysis and conclusions. For instance, our default proxy pricing measures are only interim approaches, setting bounds for unbundled element pricing in the absence of state-approved forward-looking cost studies. Our proxies will assist states in the very near term when, because of time or staff resource constraints, they may be unable to set prices by conducting or approving forward-looking economic cost studies within the statutory time period set for arbitrations. Indeed, the first set of state arbitrations must be completed in early November under the deadlines established in the Act.

25. An example of GTE and SNET's misguided arguments on the merits is their criticism of the Commission's unbundled loop proxy calculation. In asserting that the Commission ''might just as well have picked the default prices out of a hat,'' petitioners omit any mention of the several pages of the order describing how we calculated our loop proxy figures. As detailed in section VII.C. of the *First Report and Order,* our proxy ceilings are based on prices set by six state commissions as their best estimates of forward-looking costs after analysis of economic cost studies. We then derived price ceilings for individual states throughout the nation by adjusting the average of the prices in these six states by the relative loop costs in those states, as estimated by the two forward-looking economic cost-based models that received significant comment by parties during this proceeding. To allow a reasonable margin to enable the proxy ceiling to capture the variation among states' forward-looking economic costing prices, we then adjusted the resulting prices upward by five percent.

26. Contrary to GTE and SNET's arguments, it is no surprise, and certainly not error, that the price ceiling for Florida—or for Connecticut, Colorado, Michigan, Illinois, or Oregon, for that matter—does not equal the results of the cost studies in those individual states. We concluded that an average of the six states' prices represented the best estimate of forward-looking loop costs available to us at that time, and that relying on an average of the nationwide relative costs from the *Hatfield* and *BCM* models was the best method for deriving proxy price ceilings in individual states. We believe our methodology is reasonable, even though our proxy ceiling in Florida is $13.68 while the Florida Commission set a $20 per loop price for GTE Florida. We note that the price set by the Florida Commission for GTE–Florida was itself significantly higher than those the commission set for BellSouth and United/Centel—the other local telephone companies for which the state commission has set unbundled loop prices in Florida. We concluded that the reliability of our foundation estimate was enhanced by using an average of the prices established in all six states for which information was available, rather than using just one state or the six states individually. We did not, and could not in the time frame permitted under the statute, independently verify the accuracy of the six states' unbundled loop prices, many of which also were interim in nature. Instead, we emphasized that each state, in our judgment, used a standard that appeared to be reasonably close to the forward-looking economic cost methodology specified in the *First Report and Order,* although perhaps not consistent in every detail with our prescribed methodology. Finally, we also are unpersuaded by GTE and SNET's assertion that it was a fatal error to rely on the Florida cost studies because the Florida Commission failed to include any ''significant'' contribution to GTE Florida's common costs. It is not clear on its face that the ''insignificant'' contribution to common costs is inconsistent with our requirement that there be a reasonable allocation of common costs. In addition, the Florida Commission affirmatively found that their rates were not below GTE Florida's costs, and explicitly provided for recovery of a reasonable profit. GTE and SNET have not demonstrated that use of the Florida Commission prices as part of setting a proxy ceiling for unbundled loop prices was so unreasonable as to result in a flawed loop proxy methodology. In sum, we set default proxy price ceilings and ranges for use by state commissions, in the absence of fully approved forward-looking cost studies, based on the best evidence available to us within the statutory time period for our decision.

27. Finally, petitioners' discussion of our proxy prices simply ignores two key characteristics of our proxy rules. First, our order makes clear that these proxies are interim in nature, and that states utilizing the proxies must replace them with prices based on the results of forward-looking cost studies as they become available. Second, our rules permit incumbent LECs to obtain a price higher than the Commission's proxy ceiling by submitting to a state commission during an arbitration an economic cost study that demonstrates that the incumbent LEC's costs do in fact exceed the proxy price. If the forward-looking costs for petitioners are in fact higher than our proxy price ceiling, as applied in an individual state, they need only demonstrate that to the state commission.

E. Special Circumstances of This Case

28. In addition to movants' failure to satisfy the four-part test for evaluating requests for stay, the circumstances of this specific case particularly militate against the grant of their motions. Ordinarily when we are asked to stay the effectiveness of one of our orders or rules, the moving party seeks to maintain the *status quo* until a reviewing authority can sort out the issues and render its decision on the merits. That is not the case here, as the Joint Motion itself recognizes. Under the terms of the 1996 Act, many voluntary negotiations for private interconnection agreements and state-supervised arbitrations that are now under way will be completed before the end of the year, because Congress established strict timetables to govern the negotiation and arbitration process. The question is whether those proceedings will reflect the principles established by the Commission to implement section 251.

29. Petitioners do not seek to preserve the *status quo,* but to overturn Congress's requirement that state arbitrators ensure that approved interconnection agreements reflect the Commission's regulations implementing section 251. It is doubtful, in these circumstances, that the ordinary standards for evaluating stay motions should apply because, where the objective of the motion is not to maintain the *status quo,* the courts have applied a more demanding standard.

30. In our view, it is important that the regulations established in the *First Report and Order* not be stayed while negotiation and arbitration proceedings are taking place. As we stated in the *First Report and Order,* the negotiations between incumbent LECs and new

entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires. Under section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LECs for their customers and, consequently, incumbents have strong incentives to resist such obligations. Our national rules serve the critical role of equalizing bargaining power by establishing certain baseline principles that will ''reduce delay and lower transaction costs''—burdens that we have found ''impose particular hardships for small entities that are likely to have less of a financial cushion than larger entities.'' A stay would undermine that critical role at a most important time, disproportionately harming the competition that the statute contemplates from new entrants.

31. Moreover, Congress made clear that *it* wants our rules to be in place at this critical time. Congress specifically ordered the Commission to ''complete all actions necessary to establish regulations to implement the requirements'' of section 251 by August 8, 1996. It explained that it is ''important that the Commission rules to implement new section 251 be promulgated within six months after the date of enactment, so that potential competitors will have the benefit of being informed of the Commission's rules in requesting access and interconnection before the statutory window in new section 271(c)(1)(B) shuts.'' Section 271(c)(1)(B) authorizes a Bell Operating Company (BOC) to apply for approval to offer in-region interLATA telecommunications services if it does not receive a request for access and interconnection from a facilities-based competitor within seven months after enactment. In section 252(c)(1), Congress further ordered state arbitrators resolving interconnection disputes and imposing conditions on telecommunications companies to ''ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission.'' Under the statute, those state arbitrators must ''conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the [interconnection] request.'' Because many LECs requested interconnection shortly after the enactment of the 1996 Act on February 8, 1996 (with the consequence that arbitration of such requests must be completed soon), a stay of our rules would frustrate implementation of the procedure established by Congress. As a matter of mathematical certainty, the arbitrations cannot be completed on the timetable established by Congress—with the arbitrators ensuring that the agreements reflect the regulations prescribed by the Commission, as Congress directed in section 252(c)(1)—if the regulations are stayed.

IV. Ordering Clauses

32. Accordingly, *it is ordered* that the joint motion for stay filed by GTE Corporation and the Southern New England Telephone Company is denied.

33. *It is further ordered* that the motion for stay filed by U S West, Inc., is denied.

List of Subjects in 47 CFR Part 51

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–26517 Filed 10–16–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–44; RM–8745]

Television Broadcasting Services; Woodward, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Channel 35 Broadcasters, allots UHF TV Channel 35+ to Woodward, OK, as the community's second local and first commercial television service. *See* 61 FR 10978, March 18, 1996. Channel 35+ can be allotted to Woodward in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–26–12 NL; 99–23–26 WL. This allotment is not affected by the Commission's temporary freeze on new television allotments in certain metropolitan areas. *See Order,* 52 FR 28346, July 29, 1987. With this action, this proceeding is terminated.

DATES: Effective November 12, 1996. The period for filing applications will open on November 12, 1996. If no acceptable applications are filed by December 13, 1996, there will be no additional opportunity to file applications for this channel allotment.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–44, adopted September 20, 1996, and released September 27, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Oklahoma, is amended by adding Channel 35+ at Woodward.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–26519 Filed 10–16–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1070 and 1071

[STB Ex Parte No. 557]

Removal of Obsolete Regulations Concerning Water Carriers

AGENCY: Surface Transportation Board, Transportation.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing from the Code of Federal Regulations obsolete regulations exempting certain water carrier operations.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and established the Board within the Department of Transportation. Section 204(a) of the ICCTA provides that ''[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act.''

Under the prior law, the ICC had general jurisdiction over water carrier transportation. Former 49 U.S.C. 10541. The areas the ICC specifically regulated included domestic water carrier licensing (former section 10922); rates and practices to ensure that they were reasonable and nondiscriminatory (former sections 10701 and 10741); tariffs (former section 10761); mergers, purchases, and acquisitions (former section 11343); and limitations on the common ownership or control by railroads of water carriers (former section 11321).

The prior law also contained statutory exemptions to economic regulation of water transportation. These exemptions pertained to bulk transportation (former section 10542); incidental water transportation (former section 10543); and certain miscellaneous exemptions (former section 10544).

As relevant here, the ICC promulgated regulations at 49 CFR parts 1070 and 1071 relating to the miscellaneous exemptions provision of former 49 U.S.C. 10544. The regulations at 49 CFR part 1070 pertain to exempt water carrier transportation under former section 10544(a)(1) within New York and Philadelphia.[1] The regulations at 49 CFR part 1071 concern exemptions for water carrier transportation by small craft; water carrier transportation of passengers between places in the United States through foreign ports; water contract carrier leasing of vessels to private water carriers; and water carrier transportation of property owned by a person owning substantially all of the voting stock of the carrier.[2]

Under the ICCTA, residual jurisdiction is maintained over domestic water carriage ''to ensure that this transportation would not be subjected to similar regulation under other laws.'' S. Rep. No. 196, 104th Cong., 1st Sess. 42 (1995). The general jurisdiction statement of former section 10541(a), with the exception of an introductory clause that had permitted regulation through other laws, is now found in new section 13521. *Id.* There is no longer active regulation of domestic water carriage except for rate reasonableness regulation in the noncontiguous domestic trade (section 13701) and tariff filing in the noncontiguous domestic trade (section 13702) with certain exceptions.[3] Thus, the ICCTA eliminated both the broader regulatory provisions of former sections 10922, 10701, 10761, 10741, 11343, and 11321 and the general exemptions from those provisions at former sections 10542–44.

Because the statutory basis (former section 10544) for the regulations at 49 CFR parts 1070 and 1071 has been eliminated, we will remove those regulations. We emphasize, however, that the removal of these exemptions does not signify a more active regulatory role regarding water carriage. As noted, there is no longer active regulation of domestic water carrier transportation (except for rate reasonableness and tariff regulation in the noncontiguous domestic trade).

Because this action merely reflects, and is required by, the enactment of the ICCTA and will not have an adverse effect on the interests of any person, this action will be made effective on the date of publication in the Federal Register.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Parts 1070 and 1071

Water carriers.

Decided: October 7, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

PARTS 1070–1071—[REMOVED]

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended by removing parts 1070 and 1071.

[FR Doc. 96–26604 Filed 10–16–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The section 1070 regulations were issued pursuant to section 303(g)(1) of the Interstate Commerce Act (the predecessor of former 49 U.S.C. 10544(g)(1)) in *Determination of the Limits of New York Harbor and Harbors Contiguous Thereto,* Ex Parte No. 140, 6 FR 1756 (1941) and *Determination of the Limits of Philadelphia Harbor and Harbors Contiguous Thereto,* Ex Parte No. 145, 6 FR 3597 (1941).

[2] These regulations were issued pursuant to the ICC's authority in former sections 10544(a)(2), 10544(b), 10544(e), and 10544(f)(1), respectively, in Exemption of Water Carrier Operations, 4 I.C.C. 2d. 699 (1988).

[3] The exceptions are for bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste. Section 13702(a)(1).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961008281–6281–01; I.D. 091896B]

RIN 0648–AJ25

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Monkfish Exempted Trawl Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to modify the regulations implementing the Northeast Multispecies Fishery Management Plan (FMP). This rule allows a year-round exempted trawl fishery for monkfish south of 40°10' N. lat. and east of 72°30' W. long., allows additional bycatch species in the Cultivator Shoal Whiting Fishery, and adds a prohibition to enhance enforcement of the exemptions. The intent of this action is to maximize fishing opportunities in a manner that is consistent with the conservation objectives of the FMP.

EFFECTIVE DATE: October 10, 1996.

ADDRESSES: Copies of Amendment 7 to the FMP, its regulatory impact review (RIR) and the regulatory flexibility analysis contained within the RIR, and its final supplemental environmental impact statement, are available upon request from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906–1097. Copies of the Environmental Assessment (EA) supporting this action may be obtained from Dr. Andrew A. Rosenberg, Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 508–281–9272.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 7 to the FMP became effective on July 1, 1996 (61 FR 27710, May 31, 1996). These regulations implemented a

comprehensive set of measures to control fishing mortality and rebuild the primary stocks of regulated multispecies. Amendment 7 contains a bycatch control measure that is applied in each of two specific regulated mesh areas: The Gulf of Maine/Georges Bank Regulated Mesh Area and the Southern New England (SNE) Regulated Mesh Area. A vessel may not fish in these areas unless it is fishing under a multispecies or scallop days-at-sea (DAS) allocation, is fishing with exempted gear, is fishing under the handgear or party/charter permit restrictions, or is fishing in an exempted fishery.

The procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries is found in § 648.80. A fishery may be exempted by the Regional Administrator, Northeast Region (Regional Administrator), after consultation with the Council, if the Regional Administrator determines, based on available data or information, that the bycatch of regulated species is, or can be reduced to, less than 5 percent by weight of the total catch and that such exemption will not jeopardize the fishing mortality objectives of the FMP. The Regional Administrator is also authorized to impose specific gear, area, seasonal, or other limitations appropriate to reduce bycatch of regulated species.

The Council submitted a request to establish an exempted trawl fishery for monkfish south of 40°10' N. lat. and requiring 8–inch (20.3 cm) mesh or larger in the codend. In addition, the Regional Administrator received other requests for monkfish fishery exemptions that differed in area or mesh size but were similar enough to the Council's request to consider and analyze jointly. The data subsequently analyzed consisted of available otter trawl and beam trawl sea sampling, vessel trip reports, and catch data. Consequently, in the regulatory text, references to trawl vessels refer to otter trawl and beam trawl vessels.

The Regional Administrator has also received and completed the data analysis for a request involving the existing Cultivator Shoal Whiting Fishery exemption. The request was submitted by an individual fisher seeking additional bycatch species that could be retained under the constraints of that program. The Regional Administrator also consulted with the Council on this request and found no opposition to adding the requested species.

Based on the analysis of the available data regarding regulated species bycatch for the gear, area, and time periods specified in the aforementioned exemption requests, and any other relevant factors, the Regional Administrator has determined that the request for an exempted fishery submitted by the Council and the request for additional bycatch in the Cultivator Shoal Whiting Fishery submitted by a fisher meet the exemption requirements specified in § 648.80(a)(7) and (b)(4). The other requests for monkfish fishery exemptions were determined not to meet the requirements based on the EA, which is available upon request from the Regional Administrator.

This rule implements an exempted fishery for trawl vessels using a minimum mesh size of 8 inches (20.3 cm) in the codend, in the portion of the SNE Regulated Mesh Area south of 40°10' N. lat. Such vessels may retain monkfish as well as the existing bycatch species allowed for the SNE Regulated Mesh Area (§ 648.80(b)(3)). Vessels fishing in this exempted fishery are subject to net stowage requirements if mesh less than 8 inches (20.3 cm) is on board and may not possess regulated species.

Vessels enrolled in the existing Cultivator Shoal Whiting Fishery may retain, in addition to the currently allowed bycatch species, unlimited amounts of butterfish and mackerel and may retain red hake and dogfish, each in amounts not to exceed 10 percent, by weight, of all other species on board. The 10 percent limit is based on data that indicate that, when landed as bycatch these two species would not result in greater than 5 percent bycatch of regulated multispecies. To ensure that a directed fishery does not occur for dogfish and red hake in the Cultivator Shoal Whiting Fishery, and that the species are only bycatch, a 10 percent limit is imposed. Ten percent is consistent with previous bycatch limits.

A directed fishery for mackerel is unlikely to occur, as it is impractical with the gear used in this fishery. A directed fishery for butterfish is unlikely to occur, because the area is located in the northernmost extent of the species' range and, like mackerel, a directed fishery is impractical with the gear required under the program. Hence, no bycatch limits are necessary for these species. All four additional bycatch species are allowed under the existing time, area, and gear restrictions of the Cultivator Shoal Whiting Fishery exemption.

Finally, this rule adds a prohibition to the regulations to enhance enforceability, specifically referring to the exemptions authorized under § 648.80.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss this management measure, as well as consultation with the Council on any request for exemption during a public Council meeting, provided full prior notice and opportunity for public comment to be made and considered, making additional opportunity for public comment unnecessary.

Because this rule relieves a restriction under 5 U.S.C. 553(d)(1), it is not subject to a delay in effective date.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 9, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraph (a)(43) is revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(43) Violate any of the provisions of § 648.80(a)(3), (4), (5), (8), (9), (b)(3) or (b)(5), or of any exempted fishery authorized by the Regional Director. A violation of any of these paragraphs is a separate violation.

* * * * *

3. In § 648.80, paragraphs (a)(4)(i)(A) and (b)(2)(iii) are revised, and paragraph (b)(5) is added to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(4) * * *

(i) * * *

(A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a letter of authorization issued by the Regional Director on board and may not fish for, possess on board, or land any species of fish other than whiting, except for the

following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; squid; butterfish; mackerel; monkfish and monkfish parts, dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; and American lobster—up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

* * * * *

(b) * * *

(2) * * *

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine in use or available for immediate use, as described under § 648.23(b), by a vessel when not fishing under the Northeast multispecies DAS program and when fishing in the SNE regulated mesh area is specified under the exemptions set forth in paragraphs (b)(3), (b)(5), (c), (e), (h), and (i) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the SNE regulated mesh area.

* * * * *

(5) *SNE Monkfish Fishery Exemption Area.* A trawl vessel may fish in the SNE Monkfish Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section. The SNE Monkfish Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(i) *Requirements.* (A) A vessel fishing in the SNE Monkfish Fishery Exemption Area under this exemption, when not fishing under a NE multispecies DAS, may not fish for, possess on board, or land any species of fish other than monkfish, except that such vessels may retain and land the bycatch species and amounts specified in paragraph (b)(3) of this section. Vessels fishing under this exemption may not possess regulated species unless fishing under the NE Multispecies DAS program.

(B) All trawl nets must comply with a minimum mesh size of 8 inches (20.3 cm) square or diamond mesh applied throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(5)(i)(B) of this section must be stowed in accordance with one of the methods described under § 648.23(b).

(ii) [Reserved]

* * * * *

[FR Doc. 96–26498 Filed 10–10–96; 4:15 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 202
Thursday, October 17, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–22]

Proposed Amendment to Class D Airspace; St. Petersburg Albert-Whitted Airport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D surface area airspace at the St. Petersburg, FL, Albert-Whitted Airport. Due to the low density aircraft traffic environment at and the proximity of the Tampa International Airport to the Albert-Whitted Airport, the Class D airspace at the Albert-Whitted Airport above 1,500 feet AGL has been delegated to Tampa Approach Control. Therefore, the height of the Albert-Whitted Airport Class D airspace will be amended from 2,500 feet AGL to 1,500 feet AGL.

DATES: Comments must be received on or before December 1, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–22, Manager, Operations Branch, ASO–530, P. O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ASO–22.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P. O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class D surface area airspace at the St. Petersburg, FL, Albert-Whitted Airport. Due to the low density aircraft traffic environment at and the proximity of the Tampa International Airport to the Albert-Whitted Airport, the Class D airspace at the Albert-Whitted Airport above 1,500 feet AGL has been delegated to Tampa Approach Control. Therefore, the height of the Albert-Whitted Airport Class D airspace will be amended from 2,500 feet AGL to 1,500 feet AGL. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which are incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D St. Petersburg Albert-Whitted Airport, FL [Revised]

St Petersburg, Albert-Whitted Airport, FL
(Lat. 27°45′54″ N, long. 82°37′38″ W)
MacDill AFB
(Lat. 27°50′57″, N, long. 82°31′17″ W

That airspace extending upward from the surface to and including 1,500 feet MSL within a 4-mile radius of the Albert-Whitted Airport; excluding that portion northeast of a line connecting the points of intersection with a 4.5-mile radius circle centered on Mac Dill AFB; excluding that portion within the Tampa International Airport, FL, Class B airspace area. This Class D airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on October 8, 1996.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–26664 Filed 10–16–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 960918263–6263–01]

RIN 0691–AA27

International Services Surveys: BE–20 Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules to amend the reporting requirements for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

The BE–20 benchmark survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. It is taken once every five years. The last survey was conducted for 1991, and the next survey will be conducted for 1996. The BE–20 is a benchmark survey that is intended to cover the universe of selected U.S. services transactions with unaffiliated foreign persons. In nonbenchmark years, universe estimates of these transactions are derived from reported sample data by extrapolating forward the universe data collected in the BE–20 survey. The data are needed to support U.S. trade policy initiatives on international services and to compile the U.S. balance of payments and the national income and product accounts.

The major change to the BE–20 benchmark survey contained in these proposed rules is to expand its coverage to obtain data on additional types of services. Transactions in the following types of services would be covered on the BE–20 for the first time: Merchanting services (sales only), financial services by firms that are not financial services providers (purchases only), operational leasing services, selling agent services, and ''other'' private services. ''Other'' private services consists of transactions in satellite photography, security, actuarial, salvage, oil spill and toxic waste cleanup, language translation, and account collection services.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before November 18, 1996.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room M–100, 1441 L Street, NW., Washington, DC 20005. Comments will be available for public inspection in Room 7006, 1441 L Street, NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Assistant Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: These proposed rules amend 15 CFR part 801 by revising § 801.10 to set forth revised reporting requirements for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the act provides that ''The President shall, to the extent he deems necessary and feasible—* * * (4) conduct * * * benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons. * * *'' In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–20 benchmark survey is conducted once every five years. The next survey will cover 1996; the last survey was conducted for 1991. The survey is intended to cover the universe of selected U.S. services transactions with unaffiliated foreign persons. In nonbenchmark years, universe estimates of these transactions are derived from reported sample data by extrapolating forward the universe data collected in the BE–20 benchmark survey. The data are needed to support U.S. trade policy initiatives on international services; compile the U.S. balance of payments and national income and product accounts; develop U.S. international price indexes for services; assess U.S. competitiveness in, and promote, international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities for services trade.

The major change to the BE–20 benchmark survey contained in these proposed rules is to expand coverage to obtain data on additional types of services. The expanded coverage will fill several of the remaining major gaps in Government statistics on international services transactions in new, growing, and volatile services categories. Transactions in the following types of services would be covered on the BE–20 for the first time: Merchanting services (sales only), financial services by firms that are not financial services providers (purchases only), operational leasing services, selling agent services, and ''other'' private services. ''Other'' private services consists of transactions in satellite photography, security, actuarial, salvage, oil spill and toxic waste cleanup, language translation, and account collection services.

Reporting in the BE–20 benchmark survey is required from U.S. persons with sales to, or purchases from, unaffiliated foreign persons in excess of $500,000 in any of the services covered during the reporting year. Those meeting this criterion must supply data on the amount of their total sales or total purchases of each type of service in which their transactions exceeded this threshold amount. Except for sales of merchanting services, the data also must

be disaggregated by country; for sales of merchanting services, data are required to be reported only for all foreign countries combined. U.S. persons with purchases or sales during the reporting year of $500,000 or less in a given type of covered service are asked to provide, on a voluntary basis, estimates only of their total purchases or total sales, as appropriate, for the given type of service.

To reduce respondent burden, BEA is eliminating several questions in the U.S. reporter identification section of the survey. Specifically, a requirement to disaggregate sales or gross operating revenues by individual detailed (3-digit) industry has been eliminated, and only a single industry for the consolidated enterprise is to be reported. In addition, a question on the respondent's total number of full-time and part-time U.S. employees at the end of its fiscal year has been eliminated.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request for review of the forms has been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act.

Notwithstanding any other provisions 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 displays a currently valid OMB Control Number: such a Control Number (0608–0058) has been displayed.

Public reporting burden for this collection of information is estimated to vary from 4 to 500 hours, with an overall average burden of 12 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0058, Washington, DC 20503.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total sales or total purchases transactions with unaffiliated foreign persons in a covered type of service exceed $500,000 during the year. Of those smaller businesses that must report, most will tend to have specialized operations and activities and will likely report only one type of service; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

Balance of payments, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: September 16, 1996.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801, as follows:

PART 801—[AMENDED]

1. The authority citation for Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1997 Comp., p. 86) as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 801.10 is revised to read as follows:

§ 801.10 Rules and regulations for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

The BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, will be conducted covering companies' 1996 fiscal year and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–20 survey are given below. More detailed instructions and descriptions of the individual types of services covered are given on the report form itself.

(a) The BE–20 survey consists of two parts and eight schedules. Part I requests information needed to determine whether a report is required and which schedules apply. Part II requests information about the reporting entity. Each of the eight schedules covers one or more types of services and is to be completed only if the U.S. Reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who must report.* (1) *Mandatory reporting.* A BE–20 report is required from each U.S. person who had transactions (either sales or purchases) in excess of $500,000 with unaffiliated foreign persons in any of the services listed in paragraph (c) of this section during its fiscal year covered by the survey.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search. Because the $500,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(ii) Reporters who file pursuant to this mandatory reporting requirement must complete Parts I and II of Form BE–20 and all applicable schedules. The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) on line 1 of the schedule. In addition, except for sales of merchanting services, these amounts must be distributed below line 1 to the country(ies) involved in the transaction(s). For sales of merchanting services, the data by individual foreign Country are not required to be reported, although these data may be reported voluntarily.

(iii) Application of the $500,000 exemption level to each covered service is indicated on the schedule for that particular service. It should be noted that an item other than sales or purchases may be used as the measure of a given service for purposes of determining whether the threshold for mandatory reporting of the service is exceeded.

(2) *Voluntary reporting.* If, during the fiscal year covered, the U.S. person's

total transactions (either sales or purchases) in any of the types of services listed in paragraph (c) of this section are $500,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service.

(i) Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search. Because the $500,000 threshold applies separately to sales and purchases, the voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(ii) The amounts of transactions reportable on a particular schedule are to be entered in the appropriate column(s) in the voluntary reporting section of the schedule: they are not required to be disagregated by country. Reporters filing voluntary information only should also complete Parts I and II of the form.

(3) Any U.S. person that receives the BE–20 survey form from BEA, but is not reporting data in neither the mandatory or voluntary section of the form, must nevertheless complete and return the Exemption Claim included with the form to BEA. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary followup contact.

(c) *Covered types of services.* Only the services listed below are covered by the BE–20 survey. Other services, such as transportation and reinsurance, are NOT covered. Covered services are: Agricultural services; research, development, and testing services; management, consulting, and public relations services; management of health care facilities; accounting, auditing, and bookkeeping services; legal services; educational and training services; mailing, reproduction, and commercial art; employment agencies and temporary help supply services; industrial engineering services; industrial-type maintenance, installation, alteration, and training services; performing arts, sports, and other live performances, presentations, and events; sale or purchase of rights to natural resources, and lease bonus payments; use or lease of rights to natural resources, excluding lease bonus payments; disbursements to fund news-gathering costs of broadcasters; disbursements to fund news-gathering costs of print media; disbursements to fund production costs of motion pictures; disbursements to fund production costs of broadcast program material other than news; disbursements to maintain government tourism and business promotion offices; disbursements for sales promotion and representation; disbursements to participate in foreign trade shows (purchases only); premiums paid on purchases of primary insurance; losses recovered on purchases of primary insurance; construction, engineering, architectural, and mining services (purchases only); merchanting services (sales only); financial services (purchases only, by companies or parts of companies that are not financial services providers); advertising services; computer and data processing services; data base and other information services; telecommunications services; operational leasing services; and ''other'' private services. ''Other'' private services covers transactions in the following types of services: Satellite photography services, security services, actuarial services, salvage services, oil spill and toxic waster cleanup services, language translation services, and account collection services.

[FR Doc. 96–26646 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR 655

[FHWA Docket No. 96–9, Notice No. 1]

RIN 2125–AD89

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Pedestrian, Bicycle, and School Warning Signs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendment to the Manual on Uniform Traffic Control Devices (MUTCD), extension of comment period.

SUMMARY: The FHWA is extending the comment period for a notice of proposed amendment to the MUTCD which was published June 7, 1996, at 61 FR 29234. The original comment period was set to close on October 7, 1996. This extension responds to concern expressed by the National Committee on Uniform Traffic Control Devices (NCUTCD) that the October 7 closing date does not provide sufficient time for appropriate response to the proposed MUTCD change. The FHWA recognizes that other commenters may be subject to similar time constraints and agrees with the NCUTCD that the comment period should be extended. Therefore, the closing date for comments is changed to February 15, 1997, which will provide the NCUTCD and other interested commenters additional time to evaluate the proposed changes and to submit responses.

DATES: Submit written comments on or before February 15, 1997.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 96–9, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendment contact Mr. Ernest Huckaby, Office of Highway Safety, Room 3416, (202) 366–9064, or Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: As noted, the original comment period for the June 7, 1996, notice of proposed amendment to the MUTCD is set to close on October 6, 1996. The NCUTCD has expressed concern that this closing date does not provide sufficient time to review the proposed change, consolidate comments, and submit these comments to its member organizations for approval. The NCUTCD only meets in January and June of each year to vote as a full body on proposals and issues relating to the MUTCD. Therefore, the closing date for comments is changed to February 15, 1997, to allow the NCUTCD and other commenters additional time to respond.

The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0.

Authority: 23 U.S.C. 315, 49 CFR 1.48.

Issued on: October 8, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–26672 Filed 10–16–96; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 123–96]

Exemption of Systems of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Drug Enforcement Administration (DEA), proposes to amend its Privacy Act regulations to provide clarity and to include an additional reason for the exemption from subsection (e)(3). The additional reason will contribute to a better understanding of the need for the exemption. The revised language applies to the following systems of records as named in paragraphs (c)(1) through (c)(6): Air Intelligence Program (Justice/DEA–001), Investigative Reporting and Filing System (Justice/DEA–008), Planning and Inspection Division Records (Justice/DEA–010), Operations Files (Justice/DEA–011), Security Files (Justice/DEA–013), and System to Retrieve Information from Drug Evidence (Stride/Ballistics) (Justice/DEA–014).

DATES: All comments must be received by November 18, 1996.

ADDRESSES: To the extent that exemption from subsection (e)(3) has already been promulgated, it is unnecessary to offer an opportunity for comment. Nevertheless, an opportunity to comment on the additional reason therefor is extended. All comments should be addressed to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Information Resources Management, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, Program Analyst (202–616–0178).

SUPPLEMENTARY INFORMATION: This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a ''significant economic impact on a substantial number of small entities.''

List of Subjects in Part 16

Administrative practices and procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as set forth below.

Dated: October 3, 1996.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.98 by revising paragraph (d)(6) as follows:

§ 16.98 Exemption of the Drug Enforcement Administration (DEA)—Limited Access.

* * * * *

(d) * * *

(6) From subsection (e)(3) because the requirements thereof would constitute a serious impediment to law enforcement in that they could compromise the existence of an actual or potential confidential investigation and/or permit the record subject to speculate on the identity of a potential confidential source, and endanger the life, health or physical safety of either actual or potential confidential informants and witnesses, and of investigators/law enforcement personnel. In addition, the notification requirement of subsection (e)(3) could impede collection of that information from the record subject, making it necessary to collect the information solely from third party sources and thereby inhibiting law enforcement efforts.

* * * * *

[FR Doc. 96–26285 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–5637–4]

Ocean Dumping; Amendment of Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend the site designation for the San Francisco Deep Ocean Disposal Site (SF–DODS), an existing deep ocean dredged material disposal site located off San Francisco, California, by extending the time period during which the disposal site would be managed under an interim disposal volume limit. A range of options are presented to solicit public comment on the appropriate length for an interim extension, and for an appropriate interim disposal volume limit. This amendment is necessary in order to allow the SF–DODS to remain open for disposal of dredged material from authorized projects, while documentation addressing comprehensive long term dredged material management for the region is being completed. The amendment is therefore intended to provide the region with continued access to an environmentally appropriate dredged material disposal alternative, without precluding any options for the comprehensive long-term management planning process now underway.

The SF–DODS would remain designated for the disposal of suitable dredged material removed from the San Francisco Bay region and other nearby harbors or dredging sites. However, EPA would not set a permanent annual disposal volume limit at this time, as originally envisioned in the August 11, 1994 site designation Final Rule. Instead, EPA is proposing to extend the existing interim management of the site for some period and volume limit yet to be determined. A decision on a permanent disposal volume limit would be made by the end of this extension period, based on the comprehensive dredged material management planning process or based on a separate alternatives-based EPA evaluation of the need for ocean disposal. All other aspects of the August 11, 1994 SF–DODS designation Final Rule, including the provisions of the Site Management and Monitoring Plan (SMMP) would remain in full effect.

DATES: Comments must be received on or before November 18, 1996.

ADDRESSES: Send questions or comments to: Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, (EPA) (W–3–3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744–1980.

FOR FURTHER INFORMATION: Contact Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region 9 (W–3–3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744–1980.

SUPPLEMENTARY INFORMATION: The primary supporting documents for this designation amendment are the Final Environmental Impact Statement (EIS) for Designation of a Deep Water Ocean Dredged Material Disposal Site off San

Francisco, California (August 1993), the Long-Term Management Strategy (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region, Draft Policy Environmental Impact Statement/Programmatic Impact Report (April, 1996), and the SF–DODS designation Final Rule [40 CFR 228(b)(70), 59 FR 41243 (August 11, 1994), subsequently republished as 40 CFR 228.15(l)(3), 59 FR 61128 (November 29, 1994)], all of which are available for public inspection at the following locations:

A. Water Docket, MC–4101, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.
B. EPA Region 9, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California.
C. ABAG/MTC Library, 101 8th Street, Oakland, California.
D. Alameda County Library, 3121 Diablo Avenue, Hayward, California.
E. Bancroft Library, University of California, Berkeley, California.
F. Berkeley Public Library, 2090 Kittredge Street, Berkeley, California.
G. Daly City Public Library, 40 Wembley Drive, Daly City, California.
H. Environmental Information Center, San Jose State University, 125 South 7th Street, San Jose, California.
I. Half Moon Bay Library, 620 Correas Street, Half Moon Bay, California.
J. Marin County Library, Civic Center, 3501 Civic Center Drive, San Rafael, California.
K. North Bay Cooperative Library, 725 Third Street, Santa Rosa, California.
L. Oakland Public Library, 125 14th Street, Oakland, California.
M. Richmond Public Library, 325 Civic Center Plaza, Richmond, California.
N. San Francisco Public Library, Civic Center, Larkin & McAllister, San Francisco, California.
O. San Francisco State University Library, 1630 Holloway Avenue, San Francisco, California.
P. San Mateo County Library, 25 Tower Road, San Mateo, California.
Q. Santa Clara County Free Library, 1095 N. Seventh Street, San Jose, California.
R. Santa Cruz Public Library, 224 Church Street, Santa Cruz, California.
S. Sausalito Public Library, 420 Litho Street, Sausalito, California.
T. Stanford University Library, Stanford, California.

A. Regulated Entities

Entities potentially regulated by this action are persons or entities seeking permits to dump dredged material into ocean waters at the SF–DODS, under the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 et seq. The rule would primarily be of relevance to parties in the San Francisco area seeking permits from the U.S. Army Corps of Engineers for the ocean dumping of dredged material at the SF–DODS as well as the U.S. Army Corps of Engineers itself. Potentially regulated categories and entities seeking to use the SF–DODS include:

Category	Examples of potentially regulated entities
Industry	Ports seeking dredged material ocean dumping permits for SF–DODS use. Marinas seeking dredged material ocean dumping permits for SF–DODS use. Shipyards seeking dredged material ocean dumping permits for SF–DODS use. Berth owners seeking dredged material ocean dumping permits for SF–DODS use.
State/local/tribal Governments.	Local governments owning ports or berths seeking dredged material ocean dumping permits for SF–DODS use.
Federal Government.	US Army Corps of Engineers for its projects proposing to use the SF–DODS. Federal agencies seeking dredged material ocean dumping permits for SF–DODS use.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the action. This table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your organization is potentially regulated by this action, you should carefully consider whether your organization is subject to the requirement to obtain an ocean dumping permit in accordance with the Purpose and Scope provisions of Section 220.1 of Title 40 of the Code of Federal Regulations, and you wish to use the SF–DODS. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION, CONTACT** section.

B. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. Sections 1401 et seq., gives the Administrator of EPA authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. This action, proposing to amend an August 11, 1994 SF–DODS designation Final Rule, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR 228.4) state that ocean dumping sites will be designated by publication pursuant to 40 CFR Part 228. This proposed site designation amendment is being published as proposed rulemaking in accordance with Section 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

By publication of a Final Rule in the Federal Register on August 11, 1994 (59 Fed. Reg. 41243), EPA Region 9 designated SF–DODS as an ocean dredged material disposal site. The center of the SF–DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of approximately 6.5 square nautical miles (22 square kilometers). Water depths within the area range between approximately 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37°39.0′ North latitude by 123°29.0′ West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively.

In its August 11, 1994 Final Rule, EPA designated SF–DODS for continued use for a period of 50 years, with an interim capacity of six million cubic yards of dredged material per calendar year until December 31, 1996. It was assumed that by that date, a comprehensive evaluation of long term dredged material management needs for the overall San Francisco Bay region would have been conducted, which would have evaluated the potential for alternatives to ocean disposal, and which could therefore serve as a basis for establishing a permanent disposal volume limit for SF–DODS. (Alternatively, the August 11, 1994 site designation Final Rule provided for EPA to establish a permanent disposal site volume based on a separate alternatives-based EPA evaluation of the need for ocean disposal.)

Since the August 11, 1994 site designation Final Rule, significant effort

has in fact gone toward development of a comprehensive dredged material management approach for the region. In particular, the multi-agency draft Policy Environmental Impact Statement/ Programmatic Environmental Impact Report entitled *Long-Term Management Strategy (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region* (LTMS draft EIS/R) was published on April 17, 1996. The LTMS draft EIS/R evaluates the overall dredged material management needs and disposal or reuse potential for the San Francisco Bay area over the next 50 years, including not only ocean disposal, but also in-Bay disposal (placement at designated sites within the San Francisco estuary that are managed under Section 404 of the Clean Water Act), and upland or wetland disposal or reuse. The policy alternatives evaluated in the LTMS draft EIS/R include varying levels of dredged material disposal or reuse in each of these three placement environments. The potential environmental and socioeconomic effects of each policy alternative is evaluated in the LTMS draft EIS/R. Selection of one of the alternative policy approaches set forth in the LTMS draft EIS/R could therefore serve as an appropriate basis for designating a permanent disposal volume limit for SF–DODS, as originally envisioned. However, the LTMS Final EIS/R process is not yet complete. Public comments on the LTMS draft EIS/R were accepted through July 19, 1996, and over 60 substantive comment letters were received, many of which suggested that significant changes should be made before finalizing the EIS/R.

The August 11, 1994 site designation Final Rule provides for EPA to base the establishment of a permanent disposal site volume limit for the SF–DODS on a separate alternatives-based evaluation of the need for ocean disposal, conducted by EPA, in the event that the LTMS EIS/R process was not completed by December 31, 1996. EPA believes that the record represented by the information and evaluations presented in its original site designation EIS and rulemaking, together with those presented in the LTMS draft EIS/R and the public comments received on the draft EIS/R, is adequate as a basis for designating a permanent disposal volume limit for SF–DODS. However, in order to provide for a maximum of public input to the overall policy approach that should be selected for long-term dredged material management (including the role of ocean disposal), EPA is proposing to extend site use under an interim disposal volume limit, and not to make a permanent volume limit determination at this time. Extending site use at this time under an interim disposal volume limit would allow the LTMS EIS/R process to continue, without precluding final selection of any of the LTMS EIS/R's overall dredged material management alternatives.

Therefore, EPA is proposing to extend the period during which the SF–DODS would be managed under an interim disposal volume limit. In this proposed rule, options are presented to solicit public comment on the appropriate length for an interim extension, and for an appropriate interim disposal volume limit.

Other than establishing an interim disposal volume limit and setting a new timeframe for designating a permanent disposal volume limit, the provisions of the August 11, 1994 site designation Final Rule would be unchanged by the amendments described in this proposed Rule. In particular, the August 11, 1994 site designation Final Rule stipulated that site use is subject to implementation of a specific Site Monitoring and Management Plan (SMMP) for the SF–DODS, and that the monitoring provisions of this SMMP would be fully implemented during the first two years of site use independent of actual volumes of dredged material disposed at the site. This proposed rule would continue the requirement to fully implement monitoring during any extended period of interim site management. Thereafter, consistent with the August 11, 1994 site designation Final Rule, the EPA Region 9 Regional Administrator may establish a minimum annual disposal volume (not to exceed 10 percent of the designated site capacity at any time) below which this monitoring program need not be fully implemented.

The SMMP provisions in the Final Rule are closely related to EPA Region 9's previous proposals on site monitoring and management. These proposals have been put forth for public review and comment on at least two occasions. First, EPA Region 9 outlined its proposals concerning site monitoring and management in the Preamble accompanying the Proposed Rule designating the SF–DODS. EPA Region 9 published the Proposed Rule in the Federal Register on February 17, 1994 (59 FR 7952), and held open a public comment period on the Proposed Rule until March 18, 1994. Second, EPA Region 9 completed a draft of a separate SMMP document and made this document available for public review and comment. EPA Region 9 published this SMMP document as an EPA Public Notice on April 20, 1994 and accepted comments on this document until June 6, 1994. The SMMP provisions in the August 11, 1994 Final Rule were determined after considering the public comments received in response to both the Proposed Rule Preamble and the SMMP document. None of the requirements of the SMMP would be changed by this proposed rule.

C. Interim Disposal Volume Limit

A range of approaches to determining an appropriate interim disposal volume limit for SF–DODS is being considered by EPA for this proposed rule. These include: (1) revising the interim disposal limit based on an updated estimate of overall dredging and potential ocean disposal needs for the San Francisco area; (2) revising the interim disposal limit based on one of the alternatives presented in the LTMS draft EIS/R; (3) revising the interim disposal limit to accommodate only those specific projects currently approved for ocean disposal (plus an additional volume to accommodate a limited number of new projects in the near term); and (4) leaving unchanged the existing interim disposal limit of six million cubic yards per year. Each of these options is discussed in the following paragraphs. (Options for the duration of the interim site management period are discussed in Section D, INTERIM SITE MANAGEMENT PERIOD, below.) Note that EPA's determination, based on the site designation EIS and rulemaking, and subsequent site monitoring results (see Section E—Compliance with Ocean Site Designation Criteria) is that no significant adverse environmental impacts are expected in association with the original interim disposal volume limit of six million cubic yards per year. All of the options discussed below for a continued interim disposal volume limit reflect either a decrease, or no change, in potential disposal activity at the SF–DODS. (No option considers an increase in the disposal volume limit, because the August, 1993 final EIS did not evaluate whether there would be potential adverse impacts at volumes greater than six million cubic yards per year. That August, 1993 final EIS would need to be supplemented with new analyses before greater volumes could be considered.) Therefore, no significant adverse environmental impacts are expected for any of these options.

EPA is specifically soliciting public comment on the following range of options, which we believe covers the full spectrum of possible actions. However, EPA will also consider

comments addressing modifications to these options. Comments should address interim disposal volume limits both from the standpoint of minimizing overall environmental impacts, and from the standpoint of providing adequate disposal volume for projects that may need dredging during the interim period. Note that additional public comment will be solicited as part of EPA's designation of a permanent disposal volume limit.

Volume Option 1: Interim disposal volume limit based on new estimate of long-term dredging need. EPA's original designation of a six million cubic yard annual disposal limit for the SF–DODS was based, in part, on the estimate of long-term dredging needs for the San Francisco Bay area contained in the site designation EIS (August, 1993). At that time, it was estimated that 400 million cubic yards of dredged material would be generated in the area over 50 years, for a long-term average of eight million cubic yards per year. It was assumed that up to 80 percent of this estimated eight million cubic yard annual average could be found to meet the ocean disposal criteria of 40 CFR Part 228 as being physically, chemically, and biologically suitable for ocean disposal at the SF–DODS. Modeling and other evaluations conducted for the site designation EIS (August, 1993) were therefore based on the site potentially accommodating a maximum of six million cubic yards per year (about 80 percent of the estimated eight million cubic yards per year total dredging).

Since EPA's August, 1993 site designation EIS, estimated long-term dredging needs for the San Francisco Bay area have decreased substantially. The LTMS draft EIS/R (April, 1996) documents the current ''high end'' estimate of long-term dredging needs for the San Francisco Bay area as being approximately 300 million cubic yards over the next 50 years. This represents a 25 percent reduction from the earlier 400 million cubic yard long-term estimate. Much of this estimated decrease is attributable to military base closures announced since EPA's August 1993 site designation EIS was being prepared. Based on the new LTMS estimate of 300 million cubic yards over 50 years, the average overall dredging need decreases from eight million to six million cubic yards per year. Under the same assumption used in the site designation EIS (August, 1993) that up to 80 percent of this dredged material may be determined to be suitable for ocean disposal, a long-term annual average of 4.8 million cubic yards of dredged material would now be assumed to be potentially suitable for ocean disposal at the SF–DODS.

Revising the interim disposal volume limit for the SF–DODS to 4.8 million cubic yards of suitable dredged material per year is not expected to have an impact on completion of existing, authorized projects. The Port of Oakland −42-Foot Deepening Project and the Port of Richmond −38-Foot Deepening Project, both of which are already authorized, will each generate over two million cubic yards of dredged material authorized for disposal at the SF–DODS. Therefore, even if both these projects were to conduct the majority of their authorized dredging within the same, single calendar year, a revised interim disposal volume limit of 4.8 million cubic yards per year would accommodate them both with little or no delay. In this event, however, only limited additional volume would be available for other projects during that year. (For example, ample capacity would be available for additional projects the following year under a two-year interim site management extension, but no additional capacity for other projects would be available under a one year extension.) In addition, in combination with existing capacity at aquatic disposal sites within the San Francisco Bay and estuary (managed under the Clean Water Act), reducing the interim disposal volume limit at the SF–DODS to 4.8 million cubic yards per year is not expected to cause an overall shortage of available disposal capacity in the region during the near term.

There are no indications that the disposal volume limit should be reduced due to any direct environmental impacts. In addition, changing the existing interim disposal volume limit before the LTMS EIS/R process is complete could be viewed by some as prejudicial to the outcome of that process. Comments supporting this option would be particularly helpful if they address why a reduced interim disposal volume limit would be appropriate, and why any outcome of the LTMS EIS/R process would not be affected by such a reduction at this time.

Volume Option 2: Interim disposal volume limit based on alternatives presented in the LTMS draft EIS/R. In addition to the No Action alternative, the LTMS draft EIS/R (April, 1996) evaluated three ''policy alternatives'' for overall management of dredged material estimated to be generated in the San Francisco Bay area over the next 50 years. Each of the alternatives retained for detailed evaluation included either ''medium'' or ''low'' levels of ocean disposal. ''Medium'' ocean disposal was defined in the LTMS draft EIS/R to be 40 percent of the average annual volume of dredged material expected to be found suitable for ocean disposal, or approximately two million cubic yards per year. ''Low'' ocean disposal was defined as 20 percent of the ocean suitable dredged material, or approximately one million cubic yards per year.

Although alternative 50-year overall management approaches having either ''medium'' or ''low'' ocean disposal volumes are being considered as long-term LTMS goals, this proposal is intended to address short term needs while that longer term process is completed. At the present time, multi-user upland or wetland reuse sites capable of managing these volumes of dredged material are not available. Until additional upland or wetland reuse sites become available, sufficient capacity must be retained at a combination of the SF–DODS and the existing in-Bay disposal sites to manage the dredged material generated by necessary projects.

Given that the Port of Oakland and Port of Richmond projects have already been authorized, setting the interim disposal volume limit to coincide directly with either the ''medium'' (two million cubic yards per year) or ''low'' (one million cubic yards per year) long-term LTMS goals would not allow consideration of additional projects for ocean disposal during the interim period. With upland alternatives extremely limited at present, this option could cause an overall shortage of available disposal capacity in the region during the near term, and could have the effect of forcing state and federal regulators to rely almost exclusively on existing sites within the San Francisco Bay and estuary for disposal of suitable dredged material from any new dredging projects during the interim period. Furthermore, the Oakland and Richmond projects could not be dredged simultaneously. The Oakland project is already in the midst of dredging, but the Richmond project had not yet begun dredging at the time this proposed rulemaking was prepared. It is likely that construction of the Port of Richmond project would be delayed for at least one year under this option. Such a delay could jeopardize the federal funding for this project.

The factors discussed above would be re-evaluated when determining an appropriate permanent disposal volume limit for the SF–DODS, once the programmatic LTMS EIS/R process has been completed.

Comments supporting this option would be particularly helpful if they include specific recommendations

regarding which LTMS draft EIS/R alternative an ocean disposal volume limit should be based on, and should provide specific information supporting such recommendations.

Volume Option 3: Interim disposal volume limit based on specific projects currently approved for ocean disposal (plus an additional volume to accommodate a limited number of new projects in the near term). Under this option, EPA would establish an interim disposal volume limit for the SF–DODS that is sufficient to allow for the potential simultaneous construction of the already authorized Port of Oakland and Port of Richmond deepening projects, plus an additional volume to accommodate a limited number of new dredging projects. For example, an interim disposal volume limit of from five million cubic yards of suitable dredged material per year would provide for construction of both the Oakland and Richmond projects in one year, plus approximately an additional one million cubic yards from other projects during that same year. (If some additional volume for other projects were not included, an overall shortage of available disposal capacity in the region could occur during the near term, and could have the effect of forcing state and federal regulators to rely almost exclusively on existing sites within the San Francisco Bay and estuary for disposal of suitable dredged material from any new dredging projects during the interim period.)

In contrast to Option 2, this option would not delay and possibly put at risk the federal funding for either the Port of Oakland or Port of Richmond deepening projects. Also, it should allow state and federal regulators to continue to evaluate whether ocean disposal may be a less damaging, practicable alternative to in-Bay disposal for some new dredging projects in the near term (prior to completion of the LTMS EIS/R process and implementation of a comprehensive, long-term management plan for the San Francisco Bay area). As with the other options discussed, no significant adverse environmental impacts would be expected in association with disposal of five million cubic yards of suitable dredged material per year at the SF–DODS. In addition, in combination with existing capacity at aquatic disposal sites within the San Francisco Bay and estuary (managed under the Clean Water Act), reducing the interim disposal volume limit at the SF–DODS to five million cubic yards per year would not be expected to cause an overall shortage of available disposal capacity in the region during the near term.

Although this option would allow only slightly more ocean disposal than Option 1 (which would allow up to 4.8 million cubic yards per year), this option represents a conceptual change in the basis under which the SF–DODS has been managed during the first two years of interim site management. Only currently authorized projects plus a small additional volume for other potential projects would be accommodated.

Comments supporting this option would be particularly helpful if they include specific recommendations regarding volume, and should provide specific supporting information.

Volume Option 4: Retain existing six million cubic yards per year interim disposal volume limit. Modeling and other evaluations conducted for both the site designation EIS (August, 1993) and the site designation Final Rule (August 11, 1994), support EPA's determination that no significant adverse environmental impacts are expected in association with disposal of up to six million cubic yards of suitable dredged material per year at the SF–DODS. Site monitoring studies conducted to date, and summarized briefly in Section E, below, are consistent with the EIS predictions and confirm that the site is performing as predicted. Therefore, no significant adverse environmental impacts would be expected if the existing interim disposal volume limit (up to six million cubic yards of dredged material per year) were to be retained during an extended period of interim site management.

Similar to Option 1 and Option 3, this option would accommodate the already authorized Port of Oakland and Port of Richmond dredging projects without delay, and would have capacity for additional near term projects for which ocean disposal may be found to be a practicable alternative. In combination with existing capacity at aquatic disposal sites within the San Francisco Bay and estuary (managed under the Clean Water Act), an interim disposal volume limit at the SF–DODS of six million cubic yards per year is not expected to cause an overall shortage of available disposal capacity in the region during the near term.

Retaining the existing disposal volume limit would require that the August 11, 1994 site designation Final Rule be amended only by changing the dates included therein, and thus would minimize any confusion among regulated entities that might otherwise result from establishing a different interim management volume for the SF–DODS. This option most clearly leaves open all options for comprehensive long-term dredged material management (including the role of ocean disposal); it would not in any way prejudice consideration of a permanent disposal volume limit based on the ongoing comprehensive management planning process.

D. Interim Site Management Period

The primary purpose in extending the interim disposal volume limit for the SF–DODS is to allow for completion of the public process associated with finalizing the LTMS EIS/R. The draft LTMS EIS/R was published on April 19, 1996, and the public comment period closed on July 19, 1996. Over 60 substantive comment letters were received on the LTMS draft EIS/R. Several comment letters expressed the view that the programmatic document was inadequate and that a revised draft EIS/R should be prepared. Other comment letters recommended that a detailed Management Plan, outlining the specific actions that state and federal agencies would take to implement any of the alternatives in the draft EIS/R, should be prepared prior to finalizing the programmatic EIS/R.

It is apparent that an LTMS final EIS/R and Record of Decision will not be available in time to serve as the basis for establishing a permanent disposal volume limit for the SF–DODS before the December 31, 1996 expiration of the interim period specified in the August 11, 1994 site designation Final Rule. Therefore, EPA is proposing to extend the interim site management period for the SF–DODS. Five options are presented below to solicit public comment on the appropriate length of an extended interim site management period. (Options for the disposal volume limit that would apply during the interim site management period are discussed in Section C, DISPOSAL VOLUME LIMIT, above.)

EPA is specifically soliciting public comment on this range of options; however, EPA will also consider comments addressing other interim site management periods, including alternatives that involve no extension at all. Such comments should address how an alternative can reasonably provide for completion of the LTMS final EIS/R, or for development of a separate EPA evaluation of the overall need for ocean disposal (as provided in the August 11, 1994 site designation Final Rule).

Extension Option 1: Two-year extension to interim site management. It is expected that relatively substantial revisions to the LTMS draft EIS/R will be required before the final EIS/R can be published and a Record of Decision signed. A two-year interim site

management extension should allow reasonable time for completion of the LTMS Final EIS/R process, including the approximate four month period necessary to conduct the rulemaking process for a permanent SF–DODS disposal volume limit. A two-year period would also be a sufficient time to allow the approved Port of Oakland deepening project to be completed, and to allow planning and contracting for the approved Port of Richmond deepening project to proceed with reasonable predictability. Ocean disposal would remain a feasible alternative to consider for upcoming projects. At the same time, a permanent disposal volume limit could be established before the end of the two-year period, if the LTMS final EIS/R process is completed earlier, or if EPA were to prepare a separate evaluation of the overall need for ocean disposal (as provided in the August 11, 1994 site designation Final Rule).

Extension Option 2: 18–Month extension to interim site management. As with Extension Option 1, an 18-month extension should be a sufficient time to allow completion of the LTMS final EIS/EIR. However, an 18-month extension might not be sufficient to provide for the subsequent rulemaking process to be completed and for a permanent disposal volume limit to become effective. In addition, an 18-month extension would make it more difficult for planning and contracting of the already-authorized Port of Richmond Deepening Project, potentially making it more likely that either the entire project would be dredged within the shorter 18-month period, or that some of the project's dredged material would have to be disposed at existing sites within the San Francisco Bay and estuary (managed under the Clean Water Act). Planning for other projects that would potentially be appropriate for ocean disposal would also be made more difficult.

Comments supporting this option would be particularly helpfull if they address why an 18-month period would be sufficient to allow for the completion of both the LTMS final EIS/EIR and subsequent ocean disposal rulemaking, without significantly affecting permitted and potential future projects or increasing disposal within the San Francisco Bay and estuary.

Extension Option 3: One-year extension to interim site management. Extending the interim site management period for only one year probably would not allow sufficient time for the finalization of the LTMS EIS/R, given the substantial concerns raised in public comments on the draft EIS/R. Following publication of the LTMS final EIS/R and Record of Decision, approximately four months would be needed for rulemaking to establish a permanent disposal volume limit for the remainder of the SF–DODS' 50-year designation. In order for the entire process to be completed within one year, a maximum of eight months would therefore be available for preparation, publication, and public review of the LTMS final EIS/R. It is unlikely that the necessary revisions can be made within a few months, particularly if they are based on a process of ongoing, open discussions with interested parties, as several commenters on the LTMS draft EIS/R have requested. As noted above, the primary reason for extending the interim site management period is to allow the LTMS final EIS/R process to be completed. At this time EPA does not believe that a one-year extension will reasonably allow this to occur.

A one-year extension might only be adequate if EPA were to prepare a separate evaluation of the overall need for ocean disposal (as provided in the August 11, 1994 site designation Final Rule); rather than moving forward with the LTMS EIS/R process at this time. This would delay completion of the LTMS EIS/R by a commensurate period. Comments supporting this option would be particularly helpful if they address why a one-year extension would be adequate to complete the LTMS EIS/R and rulemaking processes, or why a permanent disposal volume limit should be established prior to completion of the LTMS EIS/R process (based on a separate EPA evaluation of the need for ocean disposal).

Extension Option 4: Six-month extension to interim site management. Similar to Option 3 above, a six-month extension period would not provide sufficient time for the completion of the LTMS final EIS/EIR. A six-month extension might only be adequate if EPA were to prepare a separate evaluation of the overall need for ocean disposal (as provided in the August 11, 1994 site designation Final Rule), rather than moving forward with the LTMS EIS/R process at this time. This would delay completion of the LTMS EIS/R by a commensurate period. Comments supporting this option would be particularly helpfull if they address why a six-month extension would be adequate to complete the LTMS EIS/R and rulemaking processes, or why a permanent disposal volume limit should be established prior to completion of the LTMS EIS/R process (based on a separate EPA evaluation of the need for ocean disposal).

Extension Option 5: Unspecified period of interim site management (period to end following completion of the LTMS final EIS/R, or concurrent with publication of a comprehensive management plan for the San Francisco Bay region). An extension period could be tied specifically to completion of the LTMS final EIS/R process, without attempting to speculate about the timeframe needed. This option would provide the greatest assurance that any LTMS EIS/R process would in fact be completed before conducting rulemaking to establish a permanent disposal site volume for the SF-DODS. However, it would not provide the public with reasonable assurance that the LTMS final EIS/R process will in fact move forward as expeditiously as possible. In particular, interested parties might be concerned that resources adequate to continue and complete the LTMS final EIS/R process may not be committed by the agencies in a timely manner, if a specific timeframe for action is not somehow integral to the process. Comments supporting this option would be particularly helpful if they address why an indefinite extension period would be superior to the options described above, and whether and how the alternate provision (in the August 11, 1994 site designation Final Rule) to base a permanent disposal volume limit on a separate EPA evaluation of the need for ocean disposal should be incorporated under an indefinite extension.

E. Ocean Dumping Site Designation Criteria

Five general criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR Section 228.5). First, sites must be selected to minimize interference with other activities, particularly avoiding fishery areas or major navigation areas. Second, sites must be situated such that temporary (during initial mixing) water quality perturbations caused by disposal operations would be reduced to normal ambient levels before reaching any beach, shoreline, sanctuary, or geographically limited fishery area. Third, if site designation studies show that any interim disposal site does not meet the site selection criteria, use of such site shall be terminated as soon as an alternate site can be designated. Fourth, disposal site size must be limited in order to localize for identification and control any immediate adverse impacts, and to facilitate effective monitoring for long-range effects. Fifth, EPA must, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf

and where historical disposal has occurred. As described in the site designation EIS, SF–DODS was specifically selected as the alternative location which best complied with these general criteria.

In addition to the five general criteria, 11 specific site selection criteria are listed in 40 CFR 228.6(a) of the EPA Ocean Dumping Regulations for evaluation of all candidate disposal sites. The five general criteria and the 11 specific factors overlap to a great degree. The SF–DODS, as discussed in the August, 1993 site designation final EIS and subsequent rulemaking, was also found to best comply with each of the 11 specific criteria.

Site monitoring activities conducted pursuant to the requirements of the SF–DODS Site Management and Monitoring Plan have established that it is feasible to monitor at the site using standardized methods, and that to date the site is performing as expected. For example, seafloor mapping of dredged material deposits (footprint) from disposal operations indicates that deposition is occurring as predicted in the EIS. The bulk of the sediments discharged from barges have deposited within the site boundaries and have not been transported offsite thereafter. Deposit thicknesses exceeding 17 centimeters have been identified only at the center of the site, and no deposit thicknesses exceeding the five centimeter threshold established in the August 11, 1994 site designation Final Rule have been detected at or outside of the site boundaries. No apparent changes in the basic successional stage of the native benthic communities attributable to dredged material deposition have been observed outside the disposal site boundary in site monitoring studies. Therefore, any significant disturbances associated with dredged material disposal are limited to within the disposal site boundaries, as predicted. In addition, water column studies confirmed that plumes resulting from disposal operations dissipate rapidly and suspended sediment concentrations of the plumes decrease to ambient levels within the disposal site boundaries. Vessel traffic associated with disposal operations has not interfered with overall vessel traffic in the San Francisco Bay region, and observations of seabirds and marine mammals in the vicinity of disposal operations to date indicate that no apparent significant adverse impacts have occurred to these resources as a result of disposal operations. Finally, use of SF–DODS has reduced the total volume of disposal at existing in-Bay sites (managed under Section 404 of the Clean Water Act [40 CFR Section 230]). It has therefore already reduced potential cumulative effects to sensitive aquatic resources of the San Francisco Bay-Delta estuary.

Taken together, the evaluations presented in the site designation final EIS and rulemaking, and the site monitoring results to date, confirm that the SF–DODS is performing as predicted and that, in operation, it continues to meet the general and specific site designation criteria of 40 CFR 228.5 and 228.6.

EPA Region 9 has determined that the SF–DODS may appropriately be designated for use over a period of 50 years, with an interim capacity of up to six million cubic yards of dredged material per calendar year. Site capacity shall be re-evaluated based on the results of comprehensive regional dredged material management planning (including consideration of in-Bay, ocean, and upland or wetland disposal or reuse) underway at the time of this rulemaking (or, as provided in the August 11, 1994 site designation Final Rule, independently by EPA if a comprehensive management approach is not yet available).

Designation of the SF–DODS for up to six million cubic yards of suitable dredged material per year complies with the general and specific criteria used for site evaluation, as evaluated in the August 11, 1994 site designation Final Rule. The continued use of the site under an interim disposal volume limit equal to or less than this annual amount also complies with these criteria, as described in Section E, above. Management of this site will continue to be the responsibility of the Regional Administrator of EPA Region 9 in cooperation with the Corps South Pacific Division Engineer and the San Francisco District Engineer, based on requirements defined in the Final Rule. The requirement for compliance with the Ocean Dumping Criteria of the MPRSA may not be superseded by the provisions of any future comprehensive regional management plan for dredged material.

It is emphasized that ocean dumping site designation does not constitute or imply EPA Region 9's or the Corps San Francisco District's approval of actual ocean disposal of dredged materials. Before ocean dumping of dredged material at the site may begin, EPA Region 9 and the Corps San Francisco District must evaluate permit applications according to the Ocean Dumping Criteria (40 CFR Part 227) adopted pursuant to the MPRSA. EPA Region 9 or the Corps San Francisco District would not allow ocean dumping if either agency determines that the Ocean Dumping Criteria of MPRSA have not been met.

F. Compliance With Other Laws and Executive Orders

Consistency With the Coastal Zone Management Act

EPA prepared a Coastal Consistency Determination (CCD) document based on the evaluations presented in the August, 1993 site designation EIS. The CCD evaluated whether the proposed action—designation of ''Alternative Site 5'' (now SF–DODS) as described in the site designation EIS as an ocean disposal site for up to 50 years, and with an annual capacity of six million cubic yards of dredged material meeting ocean disposal criteria—would be consistent with the provisions of the Coastal Zone Management Act. The CCD was formally presented to the California Coastal Commission (Commission) at their public hearing on April 12, 1994. The Commission staff report recommended that the Commission concur with EPA's CCD, and the Commission voted unanimously to concur on the CCD without revision.

Since the approved CCD was based on 50 years of site use at up to six million cubic yards of dredged material per year, and none of the options being considered exceed these parameters, the effects of today's proposal are well within the scope of the prior review and do not require further Commission review.

Endangered Species Act Consultation

During the development of the August, 1993 site designation EIS, EPA consulted with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) pursuant to provisions of the Endangered Species Act, regarding the potential for designation and use of any of the alternative ocean disposal sites under study to jeopardize the continued existence of any federally listed threatened or endangered species. This consultation process is fully documented in the August, 1993 site designation EIS. NMFS and FWS concluded that none of the three alternative disposal sites, including Alternative Site 5, if designated and used for disposal of dredged material meeting ocean disposal criteria as described in the EIS, would likely jeopardize the continued existence of any federally listed threatened or endangered species.

This consultation was based on site use at up to six million cubic yards of dredged material per year, for 50 years. Since none of the options being

considered would exceed these parameters, and since conditions have not changed for any of the listed or candidate threatened or endangered species potentially affected by disposal site use, the effects of today's proposal are well within the scope of the prior consultation and do not require further Endangered Species Act consultation.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed rulemaking should have minimal impact on permittees. The proposed rule merely addresses the interim capacity and period of time during which the existing SF–DODS may be used under existing interim management provisions. It thus has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, an agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. §§ 604 & 605). EPA has determined that this proposed rule will not have a significant economic impact on small entities since the amended site designation will only have the effect of providing a continuing disposal option for dredged material. The proposal merely addresses the interim capacity and period of interim management of the SF–DODS. Consequently, EPA's action will not impose any additional economic burden on small entities such as small private dredging operations that seek authorization for the dumping of dredged materials. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget. Since this proposed rule would not establish or modify any information or record-keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

The Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.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, EPA 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, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or sections 202 and 205 of the UMRA. As is explained elsewhere in this preamble, the proposed rule merely relates to the period of time and interim capacity under which the existing SF–DODS may be managed by the Federal government under existing interim provisions. Accordingly, it imposes no new enforceable duty on any State, local or tribal governments or the private sector. Even if this proposed rule did contain a Federal mandate, it would not result in annual expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or the private sector. Thus this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the foregoing reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus the requirements of Section 203 of UMRA do not apply to this rule.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: October 4, 1996.

John Wise,

Acting Regional Administrator, EPA Region 9.

In consideration of the foregoing, Subchapter H of Chapter 1 of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 228.15 [Amended]

Under Extension Options

2. Option 1 for paragraph (l): paragraphs (l) (3)(vii) and (3)(x) are

amended by removing the words ''December 31, 1996'' each time they occur, and adding in their place, ''December 31, 1998''.

3. Option 2 for paragraph (l): paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words ''December 31, 1996'' each time they occur, and adding in their place, ''June 30, 1998''.

4. Option 3 for paragraph (l): paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words ''December 31, 1996'' each time they occur, and adding in their place, ''December 31, 1997''.

5. Option 4 for paragraph (l): paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words ''December 31, 1996'' each time they occur, and adding in their place, ''June 30, 1997''.

6. Option 5 for paragraph (l): paragraphs (l) (3)(vii) and (3)(x) are amended by removing the words ''December 31, 1996'' each time they occur, and adding in their place, ''four months after such time as the LTMS final EIS/EIR has been completed and a subsequent Record of Decision signed by EPA''.

Under Volume Options

7. Option 1 for paragraph (l): paragraph (l)(3)(vii) is amended by removing the words ''six million cubic yards'' and adding in their place, ''4.8 million cubic yards''.

8. Option 2 for paragraph (l): paragraph (l)(3)(vii) is amended by removing the words ''six million cubic yards'' and adding in their place, ''two million cubic yards''.

9. Option 3 for paragraph (l): paragraph (l)(3)(vii) is amended by removing the words ''six million cubic yards'' and adding in their place, ''five million cubic yards''.

[FR Doc. 96–26630 Filed 10–16–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1600, 1820, 1840, 1850, 1860, 1880, 2090, 2200, 2300, 2450, 2520, 2540, 2560, 2620, 2640, 2650, 2720, 2800, 2810, 2880, 2910, 2920, 3000, 3100, 3120, 3150, 3160, 3180, 3200, 3240, 3250, 3260, 3280, 3410, 3420, 3430, 3450, 3470, 3480, 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3590, 3710, 3730, 3740, 3800, 3810, 3830, 3870, 4200, 4300, 4700, 5000, 5470, 5510, 8370, 9180 and 9230

[WO–130–1820–00 24 1A]

RIN 1004–AC99

Appeals Procedures; Hearings Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations that govern procedures for protests of proposed decisions, contests, appeals of BLM decisions and hearings. The proposed regulations provide more consistent procedures for administrative review of BLM decisions. The proposal also clarifies when and how BLM decisions go into effect and if an appeal will or will not stay the effectiveness of a BLM decision. The goal of the proposed regulation is to present a single, streamlined administrative review process for most of BLM's decisions, thereby reducing costs and time spent on appeals by the appellants, BLM and the Office of Hearings and Appeals (OHA).

DATES: *Comments:* Submit comments by November 18, 1996. BLM will consider comments received or postmarked on or before this date in the preparation of the final rule.

ADDRESSES: Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC.; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC. 20240. Commenters may send comments through the internet to WOComment@WO0033wp.wo.blm.gov. Please include ''attn: AC99'', and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your internet message, please contact us by telephone or mail.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren 202–452–7779, or Bernie Hyde 202–452–5057.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Please provide written comments about the proposed rule which explain the reason for any recommended changes to the addresses listed above. Please indicate the section or paragraph of the proposed rule on which you are commenting.

Comments received after the closing date of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**) may, but need not be, considered or included in the Administrative Record for the final rule.

II. Background

A. Introduction—Protests, Appeals, Contests and Hearings

This rule pertains to the following: Protests—which are objections to any action proposed to be taken in any proceeding before the BLM. A protest is normally considered by the official who has the next higher rank above the BLM official who will make the proposed decision, unless otherwise directed in a notice of proposed decision, if such a notice is issued.

Appeals—which are requests under part 4 of title 43 of the Code of Federal Regulations for a review of a BLM decision. You may appeal a BLM decision if you are a party to a case and adversely affected by BLM's decision.

Contests—which are formal proceedings regarding such matters as disputes over title to lands or the validity of mining claims as described in 43 CFR 4.450 and 4.451. Contests usually involve hearings.

Hearings—which are evidentiary and factfinding proceedings before an administrative law judge. They may be held in a variety of circumstances. The Interior Board of Land Appeals (IBLA) may, on its own or at the request of an appellant, order a hearing to resolve a factual dispute related to an appeal of a BLM decision. In some cases, a hearing must be on the record when statutorily required.

B. Historical and Current Procedures

The Department of the Interior (Department) has been handling protests, appeals, contests and hearings since its creation in 1849. From 1849 until BLM was created in 1946, the

Secretary, an under secretary, or an assistant secretary signed decisions, which made them final agency actions. Prior to 1970, decisions regarding the public lands were reviewed in an administrative review process involving review by the BLM Director and then by the Secretary. This procedure was criticized for a perceived lack of impartiality. Thus, in 1970, OHA, and its component, the IBLA, were created. 43 CFR 4.1.

Under current Department regulations, anyone who seeks to protest a proposed decision, appeal a BLM decision, participate in a contest or seek a hearing, is confronted with a wide variety of procedures described in title 43 of the Code of Federal Regulations (43 CFR). Because of decades of statutory changes and resulting regulatory amendments, Departmental appeals procedures have become increasingly inconsistent.

While parts 1840 and 1850 in 43 CFR currently serve only as a cross reference to OHA regulations in 43 CFR part 4, over 40 other protest regulations and 100 other appeals regulations are found in Chapter II of 43 CFR. Chapter II of 43 CFR also contains regulations regarding hearings, contests, administrative remedies, and the effectiveness of decisions. As a result, anyone who wants to protest a proposed decision or to appeal a BLM decision may often have difficulty in understanding or following proper administrative procedures.

C. Legal Authorities for Administrative Review

The Federal Land Policy and Management Act (FLPMA) establishes a policy in favor of considering the views of the general public in establishing rules and regulations and structuring adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions and expeditious decisionmaking. 43 U.S.C. 1701(a). FLPMA also authorizes the Secretary of the Interior to promulgate rules and regulations to carry out the purposes of the FLPMA and of other laws applicable to the public lands. 43 U.S.C. 1740.

D. Proposed Procedures

BLM is proposing regulations to make the procedures for filing protests and appeals more consistent and more readily understandable and accessible to members of the public. BLM is also proposing to amend the regulations in Chapter II of 43 CFR wherever they describe protest, contest, appeals or hearings procedures. While BLM has attempted to streamline its appeals procedures and make them as consistent as possible in this proposed rule, some variation in handling of protests, contests, hearings and appeals is still necessary in BLM's regulations due to the wide variety of subject matter about which BLM makes decisions. The proposed rule identifies these variations.

When seeking administrative review of a BLM decision, you should refer to three places in the regulations: (1) The regulations which govern the specific activity, (2) the regulations proposed for part 1840 of title 43 CFR which describe general review procedures for BLM decisions and (3) the regulations in part 4 of title 43 CFR which describe OHA review procedures. Under 4.1(b) of title 43 CFR, if the general rules in subpart B of part 4 conflict with a special rule in another subpart of title 43 CFR, the special rule governs.

III. Discussion of Proposed Rule

A. Protests, Appeals, Contests and Hearings

This proposed rule identifies the steps a person would follow in order to seek to protest a decision proposed by BLM, to appeal a decision made by BLM, or to participate in a contest or hearing regarding a disputed matter. This proposed rule applies to these activities with regard to decisions proposed to be made or made by BLM under the regulations found in chapter II of 43 CFR.

The proposed rule amends the regulations found in chapter II of 43 CFR in three ways: (1) By eliminating provisions which duplicate those found in the proposed part 1840 regulations, (2) by eliminating unnecessary steps in the administrative review process where possible, and (3) by adding cross references to the proposed part 1840 and to part 4 of 43 CFR. In a few instances, certain protests, appeals, contests and hearings regulations may not follow the same general procedures outlined in proposed part 1840. Those regulations will describe the procedures which differ from the provisions in proposed part 1840.

The proposed rule explains that, when a decision has been appealed, BLM is not prohibited from reconsidering or discussing the appealed decision with the appellant or other interested parties. If BLM decides to rescind or amend the appealed decision as a result of additional review or discussion with the appellant or other interested parties, it may do so by requesting OHA to remand the matter for further action by BLM. BLM officials and appellants are encouraged to work toward informal resolutions regarding disputes over decisions proposed or made by BLM before and after appeals are filed. These informal reviews and discussions are intended to replace the unnecessarily formal mid-level reviews, such as State Director reviews, found in the existing regulations.

B. Effect of Decisions

Under the existing regulations in part 4 of 43 CFR, except as provided by other regulations, BLM decisions do not go into effect during a 30-day appeals period. If an appeal and a petition for a stay is filed during the 30-day appeals period, the decision does not go into effect for an additional 45 days or until OHA denies the petition, whichever is first. The 45-day period is used by OHA to decide if a stay is warranted. If OHA concludes that a stay is not warranted and denies the petition, the decision goes into effect when OHA denies the petition. If the 45 days pass without a decision from OHA regarding the petition for a stay, the decision goes into effect after the 45-day period. If a stay is granted, the decision does not go into effect while the appeal is pending. If neither an appeal nor a request for a stay is filed, the decision goes into effect after the 30-day appeal period.

Some regulations in chapter II of 43 CFR provide for certain categories of decisions to go into effect immediately and to remain in effect while appeals are pending. The following categories of decisions will go into effect as provided in the regulations cited below:

(1) Right-of-Way decisions under part 2800 (see § 2804.1);

(2) Right-of-Way under the Mineral Leasing Act decisions under part 2880 (see § 2884.1);

(3) Minimum impact permit decisions under subpart 2920 (see § 2920.2–2(b) as published in 61 FR 32351 (1996));

(4) Decisions to hold competitive oil and gas lease sales under § 3120.1–3;

(5) Onshore Oil and Gas Geophysical Exploration decisions under subpart 3150 (see § 3150.2);

(6) Onshore Oil and Gas Operations decisions under part 3160 (see §§ 3165.3(e) and 3165.4(c));

(7) Geothermal Resources Operations decisions under part 3260 (see § 3266.1);

(8) Coal Lease Readjustments under § 3451.2;

(9) Coal Lease Termination decisions for disqualified lessees under § 3472.1–2(e)(4) (ii) and (iii);

(10) Phosphate Lease Readjustments under § 3511.4(b);

(11) Potassium Lease Readjustments under § 3531.4(b);

(12) Gilsonite Lease Readjustments under § 3551.4(b);

(13) Hardrock Mining Surface Management decisions under subpart 3809 (see § 3809.4(f));

(14) Notices of closure to abate unauthorized grazing use under § 4150.2;

(15) Grazing decisions under group 4100 (see § 4160.3);

(16) Adopted Wild Horse and Burro removal decisions under § 4770.3;

(17) Forest Management decisions under group 5000 (see § 5003.1); and

(18) Use authorization decisions under part 8370 (see § 8372.6).

The proposed rule amends the current way in which most BLM decisions are put in effect while appeals are pending. The proposed rule describes three general classes of decisions, how those classes of decisions will go into effect, and how an appeal may or may not change the effectiveness of those classes of decisions.

First, the proposed rule describes a general rule under which BLM decisions will go into effect 30 days after the date of service of the decisions. If an appeal is filed during this 30-day appeals period, the general rule provides that BLM decisions will be stayed while appeals are pending. Under this provision, BLM may ask OHA to put a decision into effect if public interest requires.

Second, the proposed rule provides for an exception from the general rule for those categories of decisions listed above which go into effect and remain in effect while appeals are pending as provided in specific existing regulations.

Third, the proposed rule provides for a second exception for decisions which suspend use, occupancy or development of the public lands which must be put in effect immediately in order to protect health, safety or the environment. If a decision is placed in effect under either exception, the appellant may request a stay of the decision under § 4.21(b) of 43 CFR.

Because hearings procedures are located in part 4 of 43 CFR to which proposed part 1840 refers, BLM is proposing to delete part 1850 of 43 CFR from the regulations.

C. Scope of Rule

Except as specifically provided, this proposed rule does not apply to protests of BLM's planning recommendations (see 43 CFR 1610.5–2 and 1610.5–5), protests of proposed and initial classification decisions (see 43 CFR part 2400), or protests or appeals of grazing decisions (see 43 CFR part 4100). However, 43 CFR parts 1600, 2400, and 4100 may be modified in the future so that the protest provisions in part 1840 will apply to them. Also, this proposed rulemaking does not apply to protests and appeals decided by the Board of Contract Appeals under 43 CFR part 4, subpart C, or arising from Indian Affairs as addressed under 43 CFR part 4, subpart D.

D. Section by Section Description of the Rule

Section 1840.1—describes the purposes of the rule, which is to tell you how you may protest a decision proposed by BLM, appeal a BLM decision, participate in a contest or seek a hearing related to BLM decisions.

Section 1840.5—defines terms that apply to this subpart and other protest, appeals, contest and hearings regulations in chapter II of this title as amended by this rule.

Section 1840.7—describes what is not covered by this subpart.

Section 1841.10—describes what you must submit when you want to file a protest of a proposed decision.

Section 1841.11—explains how much time you have to file a protest.

Section 1841.12—tells you where you may file a protest.

Section 1842.10—describes who may appeal a BLM decision regarding the public lands and resources.

Section 1842.11—directs you to the procedures in part 4 of 43 CFR for additional information regarding appeals procedures.

Section 1843.10—describes who may file a contest.

Section 1843.11—describes who may request a hearing.

Section 1844.10—explains that BLM may reconsider a decision which has been appealed by reviewing it or by discussing it with the appellant or other interested parties.

Section 1844.11—describes how and when decisions will go into effect.

Section 1844.12—describes how you may request that a decision be stayed.

Section 1845—directs you to part 4, subparts A, B, and E, of 43 CFR for more detailed information concerning administrative review procedures.

IV. Procedural Matters

The principal authors of this proposed rule are members of the Protest and Appeals Redesign Team, under the leadership of Jeff Holdren and Bernie Hyde, assisted by the staff of the Regulatory Management Team.

National Environmental Policy Act

BLM has determined that this proposed rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, in accordance with 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Under Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusion'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

BLM has determined that this proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12612

The proposed rule does not have a substantial direct effect 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, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant BLM's preparation of a federalism assessment.

Executive Order 12630

The proposed rule does not represent a government action that interferes with constitutionally protected property

rights or would result in a taking of private property.

Executive Order 12866

The proposed rule is not significant regulatory action under section 3(f) of Executive Order 12866 and, accordingly, is not subject to review by the Office of Management and Budget.

List of Subjects

43 CFR Part 1600

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Public lands.

43 CFR Part 1820

Administrative practice and procedure, Alaska, Archives and records, Land Management Bureau, Public lands.

43 CFR Part 1840

Administrative practice and procedure, Land Management Bureau, Public lands.

43 CFR Part 1850

Administrative practice and procedure, Land Management Bureau, Public lands.

43 CFR Part 1860

Administrative practice and procedure, Land Management Bureau, Public lands.

43 CFR Part 1880

Administrative practice and procedure, Civil rights, Grants programs—natural resources, Intergovernmental relations, Land Management Bureau, Loan programs—natural resources, Public lands, Public lands-mineral resources.

43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians—lands, Land Management Bureau, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawal, Seashores, Veterans.

43 CFR Part 2200

Land Management Bureau, National forests, Public lands.

43 CFR Part 2300

Administrative practice and procedure, Electric power, Federal Energy Regulatory Commission, Land Management Bureau, Public lands—withdrawal.

43 CFR Part 2450

Administrative practice and procedure, Land Management Bureau, Public lands—classification.

43 CFR Part 2520

Irrigation, Land Management Bureau, Public lands, Reclamation, Reporting and recordkeeping requirements.

43 CFR Part 2540

Land Management Bureau, Public lands, Public lands—sale, Reporting and recordkeeping requirements.

43 CFR Part 2560

Alaska, Homesteads, Indians-lands, Land Management Bureau, Public lands, Public lands-sale, Reporting and recordkeeping requirements.

43 CFR Part 2620

Alaska, Intergovernmental relations, Land Management Bureau, Public lands-grants, Public lands-mineral resources.

43 CFR Part 2640

Airports, Land Management Bureau, Public lands-grants.

43 CFR Part 2650

Administrative practice and procedure, Alaska, Federal buildings and facilities, Indians-claims, Indians-lands, Land Management Bureau, National forests, Public land-grants, Wildlife refuges.

43 CFR Part 2710

Administrative practice and procedure, Land Management Bureau, Public lands-mineral resources, Public lands-sale.

43 CFR Part 2720

Administrative practice and procedure, Land Management Bureau, Public lands-mineral resources, Public lands-sale.

43 CFR Part 2800

Communications, Electric power, Highways and roads, Land Management Bureau, Pipelines, Public lands-rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2810

Highways and roads, Land Management Bureau, Public lands-rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2880

Administrative practice and procedure, Common carriers, Land Management Bureau, Pipelines, Public lands-rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2910

Airports, Alaska, Land Management Bureau, Public lands, Recreation and recreation areas, Waste treatment and disposal.

43 CFR Part 2920

Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 3000

Land Management Bureau, Public lands-mineral resources.

43 CFR Part 3100

Government contracts, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3120

Government contracts, Land Management Bureau, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3150

Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Government contracts, Indians-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Government contracts, Land Management Bureau, Oil and gas exploration, Public lands-mineral resources, Surety bonds.

43 CFR Part 3200

Geothermal energy, Government contracts, Land Management Bureau, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3240

Geothermal energy, Government contracts, Land Management Bureau, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Water resources.

43 CFR Part 3250

Geothermal energy, Government contracts, Land Management Bureau, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3260

Environmental protection, Geothermal energy, Government contracts, Land Management Bureau,

Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3280

Geothermal energy, Government contracts, Land Management Bureau, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3410

Administrative practice and procedure, Coal, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3420

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3430

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 3450

Coal, Government contracts, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3470

Coal, Government contracts, Land Management Bureau, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3480

Government contracts, Intergovernmental relations, Land Management Bureau, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3500

Government contracts, Land Management Bureau, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3510

Land Management Bureau, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3520

Government contracts, Land Management Bureau, Public lands-mineral resources.

43 CFR Part 3530

Government contracts, Mineral royalties, Mines, Potassium, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3540

Land Management Bureau, Public lands-mineral resources.

43 CFR Part 3550

Land Management Bureau, Public lands-mineral resources.

43 CFR Part 3560

Government contracts, Land Management Bureau, Mineral royalties, Public lands-mineral resources, Surety bonds.

43 CFR Part 3590

Environmental protection, Government contracts, Indian-lands, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3710

Administrative practice and procedure, Land Management Bureau, Mines, Public lands-mineral resources.

43 CFR Part 3730

Administrative practice and procedure, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3740

Administrative practice and procedure, Land Management Bureau, Mines, Public lands-mineral resources.

43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 3810

Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3830

Land Management Bureau, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3870

Administrative practice and procedure, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 4200

Administrative practice and procedure, Alaska, Grazing lands, Land Management Bureau, Livestock, Range management.

43 CFR Part 4300

Administrative practice and procedure, Alaska, Grazing lands, Land Management Bureau, Range Management, Reindeer, Reporting and recordkeeping requirements

43 CFR Part 4700

Horses, Intergovernmental relations, Land Management Bureau, Penalties, Public lands, Range management, Reporting and recordkeeping requirements, Wildlife.

43 CFR Part 5000

Administrative practice and procedure, Forests and forest products, Land Management Bureau, Public lands.

43 CFR Part 5470

Forests and forest products, Government contracts, Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5510

Forests and forest products, Land Management Bureau, Public lands.

43 CFR Part 8370

Land Management Bureau, Penalties, Public lands, Recreation and recreation areas, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 9180

Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 9230

Land Management Bureau, Penalties, Public lands.

Dated: September 27, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

For the reasons set forth in the preamble and under the authority of 43 U.S.C. 1740, BLM proposes to amend subchapter A, chapter II, subtitle B of Title 43 of the Code of Federal Regulations as follows:

PART 1600—PLANNING, PROGRAMMING, BUDGETING

1. The authority citation for part 1600 is revised to read as follows:

Authority: 43 U.S.C. 1740.

2. Section 1610.5–3 is amended by revising paragraph (b) to read as follows:

§ 1610.5–3 Conformity and Implementation.

* * * * *

(b) Within a reasonable time after a plan is approved or amended, subject to valid existing rights, the District or Area Manager will take action to make operations and activities under existing permits, contracts, cooperative agreements or other instruments for occupancy and use conform to the approved plan or amendment to the extent applicable laws and regulations or the existing permits, contracts, cooperative agreements or other instruments of occupancy and use allow. Any party adversely affected by this action by the District or Area Manager may appeal the action in accordance with parts 4 and 1840 of this title.

* * * * *

Group 1800—Public Administrative Procedures

PART 1820—APPLICATION PROCEDURES

3. An authority citation for part 1820 is added to read as follows:

Authority: 43 U.S.C. 1740.

4. Section 1821.2–2 is amended by revising paragraph (b) to read as follows:

§ 1821.2–2 Time limit for filing documents.

* * * * *

(b) If you are adversely affected by a decision, to reject an application may appeal the decision in accordance with parts 4 and 1840 of this title. Alternatively, if not precluded by other law or regulation, the party may file a new and properly executed application or re-execute the rejected application. The re-executed application will not relate back to the date of first execution.

5. The authority citation for subparts 1821, 1822, 1823, 1824, 1825, and 1826 is removed.

6. Part 1840 is revised to read as follows:

PART 1840—PROTESTS, APPEALS, CONTESTS, AND HEARINGS PROCEDURES

Subpart 1840—Protests, Appeals, Contests, and Hearings—General

Sec.
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Authority: 43 U.S.C. 1740.

Subpart 1840—Protests, Appeals, Contests, and Hearings

§ 1840.1 What are the purposes of this part?

(a) Except as noted in § 1840.7 below, this part tells you how you may:

(1) protest a decision proposed by BLM;

(2) appeal from a BLM decision; or

(3) seek a contest or hearing related to BLM decisions.

(b) This part is to be used in conjunction with the procedures set out in subparts A, B, and E of part 4 of this title. Under § 4.1(b) of this title, if the general rules in subpart B of part 4 conflict with a special rule in another subpart of this title, the special rule governs.

§ 1840.5 Definitions.

The following definitions apply in this subpart and in other regulations in chapter II of this title which are related to protests, appeals, contests or hearings:

Adversely Affected Party means a party who may appeal, or seek a hearing on, a decision of the BLM as provided in part 4 of this title.

Appeal means a request for review of a BLM decision under part 4 of this title. See part 4 of this title.

Contest means a formal proceeding referred to in either sections 4.450 or 4.451 of this title.

Decision and *BLM Decision* mean a decision by BLM officials which is subject to appeal under part 4 of this title, including but not limited to, notices of decision, notices of violation, notices of incidents of non-compliance, records of decision, orders, instructions, and assessments.

Hearing means an evidentiary or factfinding proceeding before an administrative law judge under § 4.415 and 4.470 of this title and under regulations contained within Chapter II of this title which may require a hearing and other applicable laws. See § 4.420 through 4.439 and § 4.452 through 4.478 of this title for hearings procedures. In some cases, a hearing must be ''on the record'' when statutorily required to be so.

Protest means any objection to any action proposed to be taken by BLM. See § 4.450–2 of this title.

Stay means injunction in the form of an order or regulation which stops a BLM decision from going into effect or suspends the effectiveness of a BLM decision.

§ 1840.7 What is not covered by this subpart?

Except as specifically provided, this subpart does not apply to:

(a) protests to planning decisions made under § 1610.5–2 and 1610.5–5 of this title;

(b) protests to proposed or initial classification decisions made under the provisions of part 2400 of this title; or

(c) grazing decisions issued under part 4100 of this title; or

(d) protests and appeals which are decided by the Board of Contract Appeals under 43 CFR part 4, subpart C.

Protests

§ 1841.10 What must I submit with a protest?

Unless otherwise provided in other regulations in this Chapter II, you must submit:

(a) your objections to or concerns about the proposed decision, and why you feel the proposed decision is wrong; and,

(b) the reasons, if any, why you believe you would be adversely affected by the proposed decision.

§ 1841.11 How long do I have to file a protest?

(a) If a proposed decision is issued to you, it will inform you how long you have to file a protest from the date you receive the notice of the proposed decision.

(b) If the proposed decision is published in the Federal Register or in some other way, you may file a protest as specified in the publication.

(c) If a regulation in this Chapter II provides for a specific time period for protests, you may file a protest in that time period.

(d) In all other cases, you may file a protest until the BLM decision is made.

§ 1841.12 Where may I file a protest?

You may file a protest at the BLM office in which the proposed decision will be made.

Appeals

§ 1842.10 Who may appeal a BLM decision regarding the public lands and resources?

You may appeal a BLM decision if you are an adversely affected party.

§ 1842.11 How do I appeal a BLM decision regarding public lands and resources?

You may appeal a BLM decision by following the procedures described in the applicable provisions of this subpart and part 4 of this title.

Contests and Hearings

§ 1843.10 Who may file a contest?

A contest may be initiated by a private entity or by a government agency such as BLM or the Department. See § 4.450 and § 4.451 of this title.

§ 1843.11 Who may request a hearing?

(a) Anyone who is a party to an appeal before the Interior Board of Land Appeals (see § 4.415 of this title) and

(b) Anyone who may properly seek a hearing under any pertinent statutes or applicable regulations.

Decisions

§ 1844.10 May BLM reconsider a decision which has been appealed?

BLM is not prohibited from reconsidering or discussing matters which have been appealed with the appellant. If BLM decides to rescind or amend the appealed decision as a result of the reconsideration or discussion, it may do so by requesting the Office of Hearings and Appeals in writing to remand the matter for further action by BLM.

§ 1844.11 When will BLM decisions go into effect?

(a)(1) Except as otherwise provided in this section, BLM decisions issued under this title will go into effect 30 days after the date of service of the decision. If a decision is published in the Federal Register, it will go into effect 30 days after the date of publication. However, except as provided in paragraphs (b) and (c) of this section, if an adversely affected party appeals the decision in accordance with this part and part 4 of this title, the decision is stayed while the appeal is pending.

(2) BLM may request, in writing, the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place a decision, or any part of it, which is not effective or has been stayed under this paragraph, into effect immediately when the public interest requires.

(b) The regulations listed below provide that certain BLM decisions will remain effective during the time a notice of appeal may be filed or while an appeal is pending. Decisions made under the following regulations will go into effect as provided in the regulations:

(1) Right-of-Way decisions under part 2800 (see § 2804.1);

(2) Right-of-Way under the Mineral Leasing Act decisions under part 2880 (see § 2884.1);

(3) Minimum impact permit decisions under subpart 2920 (see § 2920.2–2(b) as published in 61 FR 32351 (1996));

(4) Decisions to hold competitive oil and gas lease sales under § 3120.1–3;

(5) Onshore Oil and Gas Geophysical Exploration decisions under subpart 3150 (see § 3150.2);

(6) Onshore Oil and Gas Operations decisions under part 3160 (see §§ 3165.3(e) and 3165.4(c));

(7) Geothermal Resources Operations decisions under part 3260 (see § 3266.1);

(8) Coal Lease Readjustments under § 3451.2;

(9) Coal Lease Termination decisions for disqualified lessees under § 3472.1–2(e)(4)(ii) and (iii);

(10) Phosphate Lease Readjustments under § 3511.4(b);

(11) Potassium Lease Readjustments under § 3531.4(b);

(12) Gilsonite Lease Readjustments under § 3551.4(b);

(13) Hardrock Mining Surface Management decisions under subpart 3809 (see § 3809.4(f));

(14) Notices of closure to abate unauthorized grazing use under § 4150.2;

(15) Grazing decisions under group 4100 (see § 4160.3);

(16) Adopted Wild Horse and Burro removal decisions under § 4770.3;

(17) Forest Management decisions under group 5000 (see § 5003.1); and

(18) Use authorization decisions under part 8370 (see § 8372.6).

(c) BLM may place a decision which temporarily suspends use, occupancy or development of the public lands into effect immediately if it finds that immediate implementation is necessary to protect health, safety or the environment.

(d) A decision which is in effect under paragraph (b) or (c) of this section will remain in effect unless a petition for a stay is granted under § 4.21(b) of this title.

§ 1844.12 How can I request that a decision be stayed?

You may request a stay of a decision which is in effect under § 1844.11(b) or (c) by filing a petition in accordance with § 4.21(b) of this title, which sets out criteria and procedures for requesting stays.

§ 1845.10 Where can I find more information on appeals, contests, and hearings procedures?

You can find more information on the procedures of the Department of the Interior's Office of Hearings and Appeals for appeals, contests, and hearings procedure in part 4, subparts A, B and E, of this title.

PART 1850—HEARINGS PROCEDURES—[REMOVED]

7. Part 1850 is removed.

PART 1860—CONVEYANCES, DISCLAIMERS AND CORRECTION DOCUMENTS

8. An authority citation for part 1860 is added to read as follows:

Authority: R.S. 2450, as amended; 43 U.S.C. 1161, 1201, 1740 and 1745.

9. The authority citation for subpart 1862 is removed.

10. The authority citation for subpart 1863 is removed.

11. Section 1864.4 is revised to read as follows:

§ 1864.4 Appeals.

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

12. Section 1865.4 is revised to read as follows:

§ 1865.4 Appeals.

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

13. An authority citation for part 1880 is added to read as follows:

Authority: Pub. L. No. 94–565, 90 Stat. 2662, 31 U.S.C. 1601–1607; and 43 U.S.C. 1740.

14. The authority citation for subpart 1881 is removed.

15. The authority citation for subpart 1882 is removed.

16. Paragraphs (b) and (e) of § 1881.3 are revised to read as follows:

§ 1881.3 Protests.

* * * * *

(b) Any affected unit of local government may protest the results of the computations of its payment to BLM in accordance with part 1840 and part 4 of this title.

* * * * *

(e) BLM will consult with the affected unit of local government and the administering agency to resolve conflicts in land records and other data sources.

17. Section 1881.4 is revised to read as follows:

§ 1881.4 Appeals.

Any unit of local government which is adversely affected by BLM's rejection of a protest filed under this subpart may appeal the rejection in accordance with parts 4 and 1840 of this title.

PART 2090—SPECIAL LAWS AND RULES

18. An authority citation for part 2090 is added to read as follows:

Authority: 16 U.S.C. 3124; 30 U.S.C. 189; 43 U.S.C. 322, 641, 1201, 1624, and 1740.

19. The authority citation for subpart 2093 is removed.

20. The authority citation for subpart 2094 is removed.

21. In § 2091.07, the last sentence of paragraph (a) is revised to read as follows:

§ 2091.07 Principles.

(a) * * * If a BLM decision regarding an application, selection, sale, location, entry, claim or settlement has been appealed in accordance with parts 4 and 1840 of this title, the segregation continues in effect until publication of an opening order.

* * * * *

22. In § 2093.0–3, the last sentence of paragraph (a) is revised to read as follows:

§ 2093.0–3 Authority.

(a) * * * Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

* * * * *

23. In § 2093.2–3, paragraph (b) is revised to read as follows:

§ 2093.2–3 Procedures.

* * * * *

(b) *Hearing.* Except for persons who file applications under section 2 of the Act (36 Stat. 584; 30 U.S.C. 84), BLM will allow any person filing a non-mineral application or filing for lands classified as coal lands 30 days in which to submit evidence, preferably in the form of statements of experts or practical miners, that the land is in fact not coal in character, together with an application that BLM reclassify the land. BLM will reject the application if the applicant fails to furnish any evidence within the time specified. If, after considering the evidence presented and after other appropriate inquiry, BLM classifies the land as agricultural land, in the absence of other objections, BLM will allow the non-mineral application. If BLM denies reclassification, the applicant may, within 30 days from receipt of notice, apply for a hearing in accordance with parts 4 and 1840 of this title, at which he or she will have the burden of proof for showing that the classification is improper. If he or she fails to apply for a hearing within the time allowed, BLM will reject his or her application to enter or file. The rejection of the application does not preclude the person from filing another application under section 2 of the Act.

24. Section 2093.3–3 is amended by revising paragraphs (c), (d)(1)(iv) and (d)(2)(ii) to read as follows:

§ 2093.3–3 Procedures.

* * * * *

(c) *Notice to entryman; action by entryman.* (1) BLM will notify an entryman or claimant if the Geological Survey reports that land included in a non-mineral entry or claim, on which final proof has not been submitted or which has not been perfected, is in an area in which valuable deposits of oil and gas may occur, because no reliable evidence exists that the land contains geological structures which are not favorable to oil and gas accumulation. After notifying the entryman or claimant, BLM will give the entryman or claimant a reasonable time to apply for reclassification of the land as non-mineral and to submit evidence in support of the reclassification. If BLM denies the reclassification request, the entryman or claimant may seek a hearing regarding the reclassification request or appeal BLM's decision denying the reclassification request in accordance with parts 4 and 1840 of this title. If a hearing is ordered, the entryman or claimant has the burden of proof to show that BLM's denial of the reclassification was in error. If the entryman or claimant does not seek a hearing or appeal the BLM decision denying the request for reclassification, the entry or claim and any patent issued for lands under the entry or claim will reserve the oil and gas to the United States.

(2) If the Geological Survey reports that land included in a non-mineral entry or claim is in an area in which valuable deposits of oil and gas may occur after an entryman has submitted acceptable final proof or perfected a claim, BLM will not rely on the report in order to reserve the oil and gas unless it can prove that the land was known to be of mineral character on or before the date on which the entryman submitted acceptable final proof or the claim was perfected, according to the established criteria for distinguishing mineral from non-mineral lands, including the criteria recognized by the Supreme Court in United States v. Southern Pacific Company et al. (251 U.S. 1, 64 L. ed. 97). If BLM decides to reclassify the lands for the reasons stated above and, after notification, the entryman disagrees with BLM's decision within a reasonable time, BLM will seek a hearing in accordance with parts 4 and 1840 of this title. BLM has the burden of proof for justifying the reclassification. If the entryman fails to answer BLM's allegations within the time allowed, the entry or claim and any patent issued the lands under the entry or claim will reserve the oil or gas to the United States.

* * * * *

(d) *Applications to disprove classification of land; hearing.* (1) * * *

(iv) If the application is denied, the applicant may, within 30 days from notice of the denial, seek a hearing to disprove the classification in accordance with parts 4 and 1840 of this title. If the applicant fails to seek a hearing within the time allowed, BLM will reject the application to locate, select, enter or purchase.

* * * * *

(2) * * *

(ii) Claimants to whom this provision applies may file an application for a classification of the land as non-mineral, together with the evidence prescribed here to be filed by an original applicant with his request for classification with the BLM office having jurisdiction. If BLM denies the application, the claimant has 30 days from receipt of the notice of the denial to seek a hearing to establish the non-mineral character of the land in accordance with parts 4 and 1840 of this title.

* * * * *

PART 2200—EXCHANGES: GENERAL PROCEDURES

25. The authority citation for part 2200 is revised to read as follows:

Authority: 43 U.S.C. 1740.

26. In § 2201.1, paragraph (g) is revised to read as follows:

§ 2201.1 Agreement to initiate an exchange.

* * * * *

(g) BLM's withdrawal from or termination of an exchange proposal or its agreement to begin an exchange, at any time prior to a notice of decision, under § 2201.7–1, may not be protested or appealed.

27. Section 2201.7–1 is amended by revising paragraphs (b) and (c) to read as follows:

§ 2201.7–1 Notice of decision.

* * * * *

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, the decision will be subject to protest in accordance with parts 4 and 1840 of this title.

(c) Any party adversely affected by BLM's decision on a protest may appeal that decision in accordance with parts 4 and 1840 of this title.

28. Section 2201.7–2 is amended by revising paragraph (b)(4) to read as follows:

§ 2201.7–2 Exchange agreement.

(b)* * *

(4) Any BLM decision to approve an exchange in response to a protest under § 2201.7–1 has been affirmed if appealed in accordance with parts 4 and 1840 of this title; and

* * * * *

PART 2300—LAND WITHDRAWALS

29. The authority citation for part 2300 continues to read as follows:

Authority: 43 U.S.C. 1201; 43 U.S.C. 1740; E.O. 10355 (17 FR 4831, 4833).

30. In § 2310.3–2, paragraphs (f)(1) and (f)(2) are revised to read as follows:

§ 2310.3–2 Development and processing of the case file for submission to the Secretary.

* * * * *

(f) * * *

(1) If the applicant objects to BLM's findings and recommendations to the Secretary, the applicant may, within 30 days of receipt by the applicant of notification thereof, protest the findings and recommendations in accordance with parts 4 and 1840 of this title, stating his or her objections in writing, and requesting the BLM Director to review BLM's findings and recommendations. BLM will advise the applicant of the BLM Director's decision within 30 days of receipt of the applicant's protest in BLM's Washington Office. The applicant's protest and the BLM Director's decision must be made part of the case file and thereafter the case file must be submitted to the Secretary.

(2) If the applicant disagrees with the decision of the BLM Director, he/she may, within 30 days of receipt by the applicant of the BLM Director's decision, submit to the Secretary a statement of reasons for disagreement. The statement will be considered by the Secretary together with BLM's findings and recommendations, the applicant's protest, the decision of the BLM Director, the balance of the case file and any additional information the Secretary may request.

PART 2450—PETITION-APPLICATION CLASSIFICATION SYSTEM

31. An authority citation for part 2450 is added to read as follows:

Authority: 43 U.S.C. 1740.

32. In § 2450.5, paragraphs (d) is removed.

PART 2520—DESERT LAND ENTRIES

33. The authority citation for part 2520 is revised to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201 and 1740.

34. In § 2520.0–7, paragraph (b) is revised to read as follows:

§ 2520.0–7 Cross references.

* * * * *

(b) For protests, appeals, contests and hearings procedures, see parts 4 and 1840 of this title.

35. Section 2521.6 is amended by revising the last sentence of paragraph (i)(2) to read as follows:

§ 2521.6 Final proof.

* * * * *

(1) * * *

(2) * * * In default of any action by the claimant within the specified time, BLM will reject the proof. Any claimant adversely affected by BLM's rejection of a proof under this section may appeal the rejection decision in accordance with parts 4 and 1840 of this title.

36. In § 2521.8, paragraph (a) is revised to read as follows:

§ 2521.8 Contests.

(a) Contests may be initiated in accordance with parts 4 and 1840 of this title by any person seeking to acquire title to or to claim an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the BLM records.

* * * * *

37. Section 2522.2 is revised to read as follows:

§ 2522.2 Procedure on applications for extensions of time, where contest is pending.

(a) A pending contest against a desert-land entry will not prevent BLM from granting an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of a right to such an extension (41 L.D. 603).

(b) BLM will not defer its consideration of an application for extension of time because of a pending contest against the entry in question unless the contest charges are sufficient, if proven, to negate the right of the entryman to an extension of time for making final proof. If the contest charges are insufficient to negate the right of the entryman to an extension of time for making final proof, BLM will grant the application for extension if the application is regular in all respects and dismiss the contest subject to the right of appeal, but without prejudice to the contestant's right to amend his or her charges.

PART 2540—COLOR-OF-TITLE AND OMITTED LANDS

38. An authority citation for Part 2540 is added to read as follows:

Authority: 43 U.S.C. 1740.

39. In § 2541.5, paragraph (a) is revised to read as follows:

§ 2541.5 Publication; protests and contests.

(a) The applicant must publish a notice once a week for four consecutive weeks in accordance with § 1824.3 of this title, at the applicant's expense, in a newspaper and in a form designated by BLM. The purpose of the notice is to give anyone who may claim the land adversely against the applicant an opportunity to file a protest or contest to the issuance of patent under the application in accordance with parts 4 and 1840 of this title. Anyone who protests or contests the issuance of patent must serve a copy of the protest or contest on the applicant and furnish BLM with evidence of the service. BLM will post a copy of the notice for publication in the appropriate office during the entire period of publication.

Before to patent issuance, the applicant must give BLM copies of the published notice and the statement of the publisher, which will serve as evidence that the notice was published for the required period.

* * * * *

40. Section 2542.3 is revised to read as follows:

§ 2542.3 Publication and posting of notice.

If upon consideration of the application BLM determines that the applicant is entitled to purchase the land applied for, the applicant, at the applicant's expense, must publish notice of the application in a form designated by the BLM and in a newspaper of general circulation in the county in which the land applied for is located. The purpose of this notice is to give all persons who may claim the lands adversely to the applicant or who may have a bona fide objection to the proposed purchase an opportunity to file a protest or contest in accordance with parts 4 and 1840 of this title before the purchase is completed. Anyone who protests or contests the purchase must serve a copy of the protest or contest on the applicant and must furnish BLM with evidence of the service. BLM will post a copy of the notice for publication in the appropriate office during the entire period of publication. Before, to purchase, the applicant must give BLM copies of the published notice and the statement of the publisher, which will serve as evidence that the notice was published for the required period.

41. In § 2542.4, paragraph (a) is revised to read as follows:

§ 2542.4 Patent.

(a) If the applicant submits satisfactory proof of publication and no one has filed a protest or contest against the application in accordance with parts 4 and 1840 of this title during the time allowed for filing objections against the application, BLM will issue the applied-for patent.

* * * * *

42. Section 2543.4 is revised to read as follows:

§ 2543.4 Publication and posting.

Upon payment of the appraised price, BLM will issue a notice of application. The applicant must pay for publication of the notice of the application in a newspaper of general circulation, designated by BLM, in the vicinity of the applied-for lands. The notice must be published once a week for five consecutive weeks immediately prior to the date of sale. However, a sufficient time should elapse between the date of last publication and the date of sale to enable the statement of the publisher to be filed. The purpose of the notice is to give all persons who may claim the lands adversely to the applicant an opportunity during the publication period to file a protest or contest in accordance with parts 4 and 1840 of this title. Protests and contests must be corroborated. Anyone who files a protest or contest must serve a copy on the applicant and must furnish BLM with evidence of the service. BLM will post a copy of the notice for publication in the appropriate office during the entire period of publication. Before to the date fixed for the sale, the applicant must give BLM copies of the published notice and the statement of the publisher, which will serve as evidence that the notice was published for the required period.

43. Section 2543.5 is revised to read as follows:

§ 2543.5 Patent.

If the applicant submits satisfactory proof and no one has filed a protest or contest against the application in accordance with parts 4 and 1840 of this title, BLM will issue the applied-for patent.

44. Section 2544.4 is revised to read as follows:

§ 2544.4 Publication and posting.

Upon payment of the appraised price of the land, BLM will issue a notice of application. In accordance with § 1824.3 of this title, the notice must be published at the expense of the applicant in a newspaper of general circulation, designated by the BLM, in the vicinity of the applied-for lands, once a week for five consecutive weeks immediately prior to the date of sale. However, a sufficient time must elapse between the date of the last publication and the date of sale to enable the statement of the publisher to be filed. The purpose of the notice is to give all persons who may claim the lands adversely to the applicant an opportunity during the publication period to file a protest or contest in accordance with parts 4 and 1840 of this title. Protests and contests must be corroborated. Anyone who files a protest or contest must serve a copy on the applicant and must furnish BLM with evidence of the service. BLM will post a copy of the notice of publication in the appropriate office during the entire period of publication. Before the date fixed for the sale, the applicant must give BLM copies of the notice of publication and the statement of the publisher as evidence that the notice was published for the required period.

45. Section 2545.3 is revised to read as follows:

§ 2545.3 Publication and posting.

Upon payment of the appraised price, BLM will issue a notice of application. The applicant must pay for publication of the notice of the application at his/her own expense in a newspaper of general circulation, designated by BLM, in the vicinity of the applied-for lands. The notice must be published once a week for five consecutive weeks immediately before the date of sale. However, a sufficient time must elapse between the date of last publication and the date that patent is issued to enable the statement of the publisher to be filed. The purpose of the notice is to give all persons who may claim the lands adversely to the applicant an opportunity to file a protest or contest in accordance with parts 4 and 1840 of this title. Protests and contests must be corroborated. Anyone who files a protest or contest must serve a copy on the applicant and must furnish BLM with evidence of the service. BLM will post a copy of the notice of application in the appropriate office during the entire period of publication. Before patent issuance, the applicant must give BLM copies of the published notice and the statement of the publisher, which will serve as evidence that the notice was published for the required period.

46. In § 2546.3, paragraph (a) is revised to read as follows:

§ 2546.3 Payment and publication.

(a) Before lands may be sold to a qualified preference-right claimant, the claimant must pay the purchase price of the lands and must publish a notice, once a week for four consecutive weeks, at his/her expense, in a newspaper and format designated by BLM. The purpose of the notice is to give all persons an opportunity to file with the BLM State Office at Boise, Idaho, any protests or contests to issuance of patent to the claimant in accordance with parts 4 and 1840 of this title. Anyone who files a protest or contest must serve on the claimant a copy of the protest or contest and must furnish BLM with evidence of the service.

* * * * *

47. In § 2547.4, paragraph (a) is revised to read as follows:

§ 2547.4 Publication and posting.

(a) The applicant must publish a notice of the application once a week for five consecutive weeks in accordance with 1824.3 of this title, in a newspaper and a format designated by BLM. All persons who may claim the land adversely to the applicant may file with

the BLM State Office identified in the notice, a protest or contest to issuance of patent under the application in accordance with parts 4 and 1840 of this title. Anyone who files a protest or contest must serve on the applicant a copy of the protest or contest and furnish BLM with evidence of the service.

* * * * *

PART 2560—ALASKA OCCUPANCY AND USE

48. An authority citation for part 2560 is added to read as follows:

Authority: R.S. 2473; 43 U.S.C. 1201 and 1740.

49. The authority citation for subpart 2562 is removed.

50. Section 2565.2 is amended by revising paragraph (d) to read as follows:

§ 2565.2 Application; fees; contests and protests.

* * * * *

(d) *Contests and protests.* Applications for entry will be subject to contest or protest in accordance with parts 4 and 1840 of this title.

51. Section 2565.4 is amended by revising the last sentence of paragraphs (b)(1) and (b)(2) to read as follows:

§ 2565.4 Deeds.

(b)(1) * * * In case of conflicting applications for lots, the trustee, if he or she considers it necessary, may order a hearing to be conducted in accordance with parts 4 and 1840 of this title.

(2) * * * Any party adversely affected by a decision of the trustee or a decision of BLM made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

PART 2620—STATE GRANTS

52. The authority citation for part 2620 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201.

53. Section 2621.2 is amended by revising paragraph (a) to read as follows:

§ 2621.2 Publication, protests, and contests.

(a) The State must publish a notice of the application once a week for five consecutive weeks in accordance with § 1824.3 of this title, at its own expense, in a newspaper and format designated by BLM. The purpose of the notice is to give all persons who may claim the land adversely an opportunity to file with BLM a protest or contest, in accordance with parts 4 and 1840 of this title, to the issuance of a certification to the State for lands selected under the law. Anyone who files a protest or contest must serve on the State a copy of the protest or contest and furnish evidence of service to the appropriate BLM office.

* * * * *

54. Section 2623.2 is amended by removing the paragraph designation (a) and revising the last sentence to read as follows:

§ 2623.2 Claims protected.

* * * BLM will follow the procedures of parts 4 and 1840 of this title for all protests, contests, or claims filed by individuals, associations, or corporations against the States, affecting school-section lands.

PART 2640—FAA AIRPORT GRANTS

55. The authority citation for part 2640 is revised to read as follows:

Authority: 49 U.S.C. 2215.

56. In § 2641.3 paragraph (c) is revised to read as follows:

§ 2641.3 Publication and payment.

* * * * *

(c) BLM will send the decision concerning the granting or denial of an application to the applicant and to any party who commented on the application. Any party who is adversely affected by BLM's decision may appeal the decision in accordance with parts 4 and 1840 of this title.

* * * * *

PART 2650—ALASKA NATIVE SELECTIONS

57. The authority citation for part 2650 is revised to read as follows:

Authority: 43 U.S.C. 1624.

58. In § 2650.7, the third sentence of paragraph (d), introductory text, and the second sentence of paragraph (d)(2) are revised to read as follows:

§ 2650.7 Publication.

* * * * *

(d) * * * Any decision or notice actually served on parties or constructively served on parties in accordance with this section must state that any party claiming a property interest in land affected by the decision may appeal the decision in accordance with parts 4 and 1840 of this title. * * *

* * * * *

(2) * * * Furthermore, the decision or notice of decision must inform readers where further information about filing an appeal may be found. It must also state that any party known or unknown who may claim a property interest which may be adversely affected by the decision will be deemed to have waived their rights which may have been adversely affected unless they file an appeal. They must file the appeal in accordance with the requirements stated in the decisions or notices provided for in this subsection and parts 4 and 1840 of this title.

59. Section 2650.8 is revised to read as follows:

§ 2650.8 Appeals.

Any decision relating to a land selection will become final unless appealed in accordance with parts 4 and 1840 of this title.

60. In § 2653.5, paragraph (l) is revised to read as follows:

§ 2653.5 Cemetery sites and historical places.

* * * * *

(l) BLM or the Secretary will serve the decision on the applicant and all parties of record in accordance with the provisions of parts 4 and 1840 of this title. The decision will be published in accordance with the requirements of § 2650.7 of this title. The decision of BLM will become final unless appealed in accordance with parts 4 and 1840 of this title. Any agency adversely affected by the certification of BIA or the decision of BLM may also appeal the matter in accordance with parts 4 and 1840 of this title. After a decision to convey an existing cemetery site or historical place has become final, BLM will adjust the segregation of the lands to conform with that conveyance.

61. Section 2653.8–3 is revised to read as follows:

§ 2653.8–3 Appeals.

Any party who is adversely affected by a decision made by BLM on applications filed under section 14(h)(5) of the Act may appeal the decision in accordance with parts 4 and 1840 of this title.

62. Section 2655.4 is revised to read as follows:

§ 2655.4 Adverse decisions.

(a) Any decision adverse to the holding agency or Native corporation will become final unless appealed in accordance with parts 4 and 1840 of this title. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with § 4.5 of this title. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet level official. The requesting official, the State Director and any affected Native corporation must be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and

the reasons for the decision must be sent in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that BLM neglected to make a determination under section 3(e)(1) of the Act, the matter will be remanded by the Interior Board of Land Appeals to BLM for a determination under section 3(e)(1) of the Act and these regulations: provided, that the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

PART 2720—CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS

63. The authority citation for part 2720 continues to read as follows:

Authority: 43 U.S.C. 1719 and 1740.

64. Section 2720.5 is revised to read as follows:

§ 2720.5 Appeals.

Any applicant adversely affected by a decision of BLM made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

PART 2800— RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

65. The authority citation for part 2800 is revised to read as follows:

Authority: 43 U.S.C. 1733, 1740, and 1763–1764.

66. Section 2803.4 is amended by revising paragraph (e) to read as follows:

§ 2803.4 Suspension and termination of right-of-way authorizations.

* * * * *

(e) In the case of a right-of-way grant which is, under its terms, an easement, BLM will give written notice to the holder of the suspension or termination. BLM will then refer the matter to the Office of Hearings and Appeals for a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title. If the administrative law judge determines that grounds for suspension or termination exist and such an action is justified, BLM will suspend or terminate the right-of-way grant.

67. Section 2804.1 is revised to read as follows:

§ 2804.1 Appeals procedure.

(a) A party adversely affected by a decision of BLM made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) All decisions of BLM made under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

68. Section 2808.2–2 is revised to read as follows:

§ 2808.2–2 Category determination.

(a) BLM will determine the appropriate category and collect the required application processing fee under § 2808.3–1 and 2808.5 before processing an application. A record of BLM's category determination will be made and given to the applicant. A party adversely affected by this determination may appeal the decision in accordance with §§ 2804.1 and 2808.6.

(b) During the processing of an application, BLM may change a category determination to place an application in Category V at any time it is determined that the application requires the preparation of an environmental impact statement. A record of change in category determination under this paragraph will be made and given to the applicant. A party adversely affected by a revised determination may appeal the decision in the same manner as an original category determination under paragraph (a) of this section. BLM will make no other changes of category determination.

69. In § 2808.3–1, paragraph (i) is revised to read as follows:

§ 2808.3–1 Application fees.

* * * * *

(i) BLM will provide the applicant with a written determination of the reasonable costs to be reimbursed by the applicant or holder and those that will be funded by the United States under paragraphs (e) and (f) of this section and § 2808.5. A party adversely affected by this determination may appeal the decision in accordance with §§ 2804.1 and 2808.6.

70. In § 2808.5, paragraph (c) is revised to read as follows:

§ 2808.5 Other cost considerations.

* * * * *

(c) The State Director may reduce or waive fees under this section in determining reimbursable costs made under § 2808.3. Any party adversely affected by the State Director's decision may appeal the decision in accordance with §§ 2804.1 and 2808.6.

71. Section 2808.6 is revised to read as follows:

§ 2808.6 Action pending decision on appeal.

(a) Even if an appeal is filed regarding BLM's determination under § 2808.2–2(a) that an application is in Categories I through IV, the application will not be accepted for processing without payment of the fee for the application according to the category determined by BLM. However, when the payment is received, BLM may process the application and, if proper, issue the grant or temporary use permit. BLM will refund monies or make any other adjustments necessary as a result of the outcome of the appeal.

(b) If an appeal is filed regarding BLM's determination that an application is in Category V under § 2808.2–2(a) or that an applicant must pay additional costs under § 2808.3–1 (e) through (i) or § 2808.5(c), BLM will suspend processing of the application pending the outcome of the appeal.

PART 2810—TRAMROADS AND LOGGING ROADS

72. The authority citation for part 2810 continues to read as follows:

Authority: 43 U.S.C. 1181a, 1181b, 1732, 1733, and 1740.

73. Section 2812.8–1 is amended by revising paragraph (c) to read as follows:

§ 2812.8–1 Notice of termination.

* * * * *

(c) BLM will serve notice of the termination personally or by registered mail on the permittee and will describe the misrepresentation, failure or default involved. Any permittee adversely affected by BLM's notice of termination may appeal the decision in accordance with parts 4 and 1840 of this title.

* * * * *

74. Section 2812.8–2 is amended by revising the second and third sentences of paragraph (b) as follows:

§ 2812.8–2 Remedies for violations by licensee.

* * * * *

(b) * * * The permittee is bound by BLM's decision. A permittee who is adversely affected by the BLM decision may appeal the decision in accordance with parts 4 and 1840 of this title. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain appropriate relief.

75. Section 2812.9 is revised to read as follows:

§ 2812.9 Appeals.

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

76. The authority citation for part 2880 is revised to read as follows:

Authority: 30 U.S.C. 185.

77. In § 2883.1–1, paragraph (a)(4) is revised to read as follows:

§ 2883.1–1 Cost reimbursement.

(a) * * *

(4)(i) BLM may accept an application for the purpose of determining the appropriate category and the nonrefundable application processing fee. However, BLM will collect the full amount of the nonrefundable application processing fee prior to processing the application. BLM will make a record of BLM's category determination and give it to the applicant. Any party who is adversely affected by BLM's category determination may appeal the decision in accordance with § 2884.1. Even if a category determination is appealed, BLM will not process an application without payment of the fee determined by BLM. If the payment is made, BLM will process the application and will issue the grant or permit if the application is proper. BLM will refund fees if directed to do so in the appeal decision. Where the amount of the nonrefundable application processing fee submitted by an applicant exceeds the amount of the fee required in BLM's category determination, BLM will refund the excess unless requested in writing by the applicant to apply all or part of the refund to the grant monitoring fee required by paragraph (b) of this section or to the rental payment for the grant or permit.

(ii) During the processing of an application, BLM may change a category determination to place an application in Category VI at any time BLM determines that the application requires preparation of an environmental impact statement. BLM will make a record of the change in category determination under this paragraph. Any party adversely affected by BLM's decision to change the category determination may appeal the decision in accordance with § 2884.1.

78. Section 2883.5 is revised to read as follows:

§ 2883.5 Immediate temporary suspension of activities.

(a) BLM may order immediate remedial actions or an immediate temporary suspension of any activity being conducted or authorized by a holder within a right-of-way or temporary use permit area in accordance with this section and parts 4 and 1840 of this title.

(b) BLM may order an immediate suspension without regard to actions which have been or may be taken by another federal or state agency.

(c) BLM may order an immediate temporary suspension orally or in writing on the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee, or contractor of any of them. The activity must end at that time. As soon as practicable, BLM will send a written notice to the holder or the holder's designated agent to confirm the previous oral order.

79. In § 2883.6–1, paragraph (c) is revised to read as follows:

§ 2883.6–1 Suspension and termination of right-of-way grants.

* * * * *

(c) If BLM determines that a situation under § 2883.6 or this section exists in connection with a right-of-way grant, BLM will give written notice to the holder, and refer the matter to the Office of Hearings and Appeals for a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title. BLM will suspend or terminate the right-of-way grant if the administrative law judge determines that grounds for suspension or termination exist and that the action is justified.

80. Section 2883.6–2 is amended by revising paragraphs (b) and (c) to read as follows:

§ 2883.6–2 Suspension and termination of temporary permits.

* * * * *

(b) If BLM determines that a situation under § 2883.6 or this section exists, BLM will give written notice to the holder. The holder may protest the determination to the BLM office issuing the notice. The reviewing official will, within the time specified in the notice, affirm, modify, or cancel the determination and will provide the holder with a written decision.

(c) A holder who is adversely affected by the decision made under paragraph (b) of this section may appeal the decision in accordance with parts 4 and 1840 of this title.

81. Section 2884.1 is revised to read as follows:

§ 2884.1 Appeals procedure.

(a) A party adversely affected by a decision of BLM under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) Except for decisions under § 2883.6 through 2883.6–2, all BLM decisions under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

PART 2910—LEASES

82. The authority citation for part 2900 is revised to read as follows:

Authority: 43 U.S.C. 687c–1, 1441–1443 and 1740.

83. The authority citation for subpart 2911 is removed.

84. The authority citation for subpart 2912 is removed.

85. Section 2916.2–5 is added to read as follows:

§ 2916.2–5 Appeals.

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

PART 2920—LEASES, PERMITS AND EASEMENTS

86. The authority citation for part 2920 is revised to read as follows:

Authority: 43 U.S.C. 1732–1733 and 1740.

87. Section 2920.2–2 is revised to read as follows:

§ 2920.2–2 Minimum impact permits.

(a) BLM may, without publication of a notice of realty action, issue a permit for a land use authorization if BLM determines that the proposed use conforms with BLM plans, policies and programs, local zoning ordinances and any other requirements and will not cause appreciable damage or disturbance to the public lands, their resources or improvements.

(b) Permit decisions made under paragraph (a) of this section will go into effect immediately upon execution, and remain in effect during the period of time specified in the decision to issue the permit. Any person adversely affected by a decision to grant or deny a permit under paragraph (a) of this section may appeal the decision in accordance with parts 4 and 1840 of this title. However, decisions and permits issued under paragraph (a) of this section will remain in effect unless a petition for a stay is granted under § 4.21(b) of this title.

88. In § 2920.2–5 paragraph (b), introductory text, and paragraph (b)(4) are revised to read as follows:

§ 2920.2–5 Proposal review.

* * * * *

(b) If the proposal is found to be appropriate for further consideration, BLM will examine the proposal and make one of the following determinations:

* * * * *

(4) The proposed land use does not conform with the approved land use plan. Any party adversely affected by this determination may appeal the determination in accordance with parts 4 and 1840 of this title.

89. Section 2920.4 is amended by revising paragraph (d) to read as follows:

§ 2920.4 Notice of realty action.

* * * * *

(d) An application submitted before a notice of realty action is published will not be processed and will be returned to the person who submitted it. Return of an application may not be appealed or protested.

90. Section 2920.9–3 is amended by revising paragraphs (b)(1) and (c), introductory text, and (c)(2) to read as follows:

§ 2920.9–3 Termination and suspension.

* * * * *

(b)(1) If BLM determines that there is noncompliance with the terms and conditions of a land use authorization which adversely affects health, safety or the environment, BLM will order an immediate temporary suspension of the land use in accordance with § 1844.11 (c) of this title.

* * * * *

(c) Process for termination or suspension other than temporary immediate suspension.

* * * * *

(2) After BLM gives the holder of the land use authorization due notice of termination or suspension, if noncompliance still exists after a reasonable time, BLM will give written notice to the holder and refer the matter to the Office of Hearings and Appeals for a hearing before an administrative law judge in accordance with part 1840 and 4.420–4.439 of this title. BLM will suspend or revoke the land use authorization if the administrative law judge determines that grounds for suspension or revocation exist and that such an action is justified.

PART 3000—MINERALS MANAGEMENT: GENERAL

91. The authority citation for part 3000 is revised to read as follows:

Authority: 30 U.S.C. 189, 306 and 359; 16 U.S.C. 3150; 43 U.S.C. 1740; 42 U.S.C. 6508; 31 U.S.C. 9701(b); and 40 Op. Atty. Gen. 41.

92. Section 3000.4 is revised to read as follows:

§ 3000.4 Appeals.

Except as provided in § 3101.7–3(b), 3102.5–1, 3108.3, and 3120.1–3 of this title, any party adversely affected by a decision of BLM made under the provisions of Group 3000 or Group 3100 of this title may appeal the decision in accordance with parts 4 and 1840 of this title.

§ 3000.5 [Removed]

93. Section 3000.5 is removed.

PART 3100—ONSHORE OIL AND GAS LEASING

94. The authority citation for part 3100 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.,* 30 U.S.C. 351–359.

95. Section 3101.7–3 is revised to read as follows:

§ 3101.7–3 Appeals.

(a) Any party adversely affected by a decision of BLM to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) If, as provided by statute, a surface managing agency has required that certain stipulations be included in a lease or has consented, or objected or refused to consent to leasing, any lease offeror adversely affected by the surface managing agency decision may appeal the decision only in accordance with the administrative appeals procedures provided for by the particular surface managing agency.

PART 3120—COMPETITIVE LEASES

96. The authority citation for part 3120 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351–359; 16 U.S.C. 3101 *et seq.;* 43 U.S.C. 1701 *et seq.;* 40 U.S.C. 471 *et seq.,* and 40 Op. Atty. Gen. 41.97. Section 3120.1–3 is revised to read as follows:

§ 3120.1–3 Protests and appeals.

(a) A decision of BLM to hold a lease sale as provided under this subpart will not be suspended or stayed under § 4.21(a) or § 1844.11 of this title if an appeal of the decision is filed. BLM may suspend the offering of a specific parcel while considering a protest or appeal regarding its inclusion in a Notice of Competitive Lease Sale.

(b) Only the Secretary or the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good and just cause after reviewing the reason(s) for an appeal.

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

98. The authority citation for part 3150 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 43 U.S.C. 1733 and 1740; 16 U.S.C. 3150; 42 U.S.C. 6508; and 31 U.S.C. 9701.

99. In § 3150.1, the second sentence is revised to read as follows:

§ 3150.1 Suspension, revocation or cancellation.

* * * The Secretary may order an immediate temporary suspension of activities authorized under a permit or other use authorization as provided in § 1844.11(c) of this title.

100. Section 3150.2 is revised to read as follows:

§ 3150.2 Appeals.

(a) Any party adversely affected by a decision or approval of BLM under this subpart may appeal that decision in accordance with parts 4 and 1840 of this title.

(b) All decisions and approvals of BLM under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

(c) Notwithstanding paragraph (b) of this section, nothing in this section will diminish BLM's discretionary authority to stay the effectiveness of a decision under this subpart if the decision is appealed and an adversely affected party requests a stay or BLM decides to stay the decision on its own initiative.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

101. The authority citation for part 3160 continues to read as follows:

Authority: 43 U.S.C. 1733; 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 306; 25 U.S.C. 396, 396d, 398e and 399; 42 U.S.C. 6508; 30 U.S.C. 1701 *et seq.*

102. Section 3165.3 is revised to read as follows:

§ 3165.3 Notice and hearing on the record.

(a) *Notice.* If an operating rights owner or operator fails to comply with any provisions of the lease, the regulars in this part, applicable orders or notices, or any other appropriate orders of BLM, BLM will give the party written notice to remedy any defaults or violations. BLM will serve written orders or notices of violation, assessment, or proposed penalty on the party by personal service or by certified mail. Any person may designate a representative to receive any notice of violation, assessment, or proposed penalty on his/her behalf. In the case of a major violation, BLM will make a good faith effort to contact the designated representative by telephone to be followed by a written notice. Receipt of notice will be deemed to

occur at the time of the telephone contact, and the time of notice and the name of the receiving party will be documented in the file. If BLM is unable to contact the designated representative after good faith efforts, BLM will serve notice of the major violation on any person conducting or supervising operations subject to the regulations in this part. In the case of a minor violation, BLM will serve notice as described above. A copy of all orders, notices, or instructions served on any contractor or field employee or designated representative will also be mailed to the operator. Any notice involving a civil penalty will be mailed to the operating rights owner.

(b) No civil penalty will be assessed under this part until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Any party adversely affected by BLM's decision on the proposed penalty may request a hearing on the record before an administrative law judge or, in lieu of a hearing, may appeal that decision directly to the Interior Board of Land Appeals as provided in § 3165.4(b)(2). If the party elects to request a hearing on the record, the request must be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the notice of proposed penalty. If a hearing on the record is requested, the State Director will refer the complete case file to the Office of Hearings and Appeals for a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title.

(c) Effect of request for hearing on the record. Any request for a hearing on the record before an administrative law judge under this section will not suspend the requirement to comply with the notice of violation or proposed penalty or stop the daily accumulation of assessments, unless an administrative law judge so determines in accordance with part 4 of this title. However, a request for a hearing on the record will suspend the accumulation of additional daily penalties until a final decision is rendered, except that within 10 days of receipt of a request for a hearing on the record, the State Director may, after review of the request, recommend that the BLM Director reinstate the accumulation of daily civil penalties until the violation is abated. Within 45 days of the filing of the request for a hearing on the record, the BLM Director may reinstate the accumulation of civil penalties if he/she determines that the public interest requires a reinstatement of the accumulation and that the violation is causing or threatening immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the BLM Director does not reinstate the daily accumulation within 45 days of the filing of the request for a hearing on the record, the suspension of accumulation of additional daily penalties will continue.

103. Section 3165.4 is revised to read as follows:

§ 3165.4 Appeals.

(a) *Appeal of decision.* Any party adversely affected by a notice, instruction, order, or decision under this subpart may appeal it in accordance with parts 4 and 1840 of this title.

(b) *Appeal from decision on a proposed penalty after a hearing on the record.* (1) Any party adversely affected by the decision of an administrative law judge on a proposed penalty after a hearing on the record under § 3165.3 may appeal that decision in accordance with parts 4 and 1840 of this title.

(2) In lieu of a hearing on the record under § 3165.3, any party adversely affected by a proposed penalty may waive the opportunity for such a hearing on the record by appealing directly to the Interior Board of Land Appeals in accordance with parts 4 and 1840 of this title. However, waiving the right to a hearing on the record precludes further appeal to the District Court under section 109(j) of the Federal Oil and Gas Royalty Management Act.

(c) *Effect of an appeal on a decision by an administrative law judge.* All decisions of an administrative law judge under this part will go into effect immediately and remain in effect while any appeals are pending unless a stay is granted in accordance § 4.21(b) of this title. Notwithstanding the foregoing sentence, nothing in this paragraph will diminish the BLM's discretionary authority to stay the effectiveness of a decision which has been appealed under paragraph (a) or (b) of this section if an adversely affected party requests a stay or if BLM's decides a stay is warranted on its own initiative.

(d) *Effect of appeal on compliance requirements.* Except as provided in paragraph (e) of this section, any appeal filed in accordance with paragraphs (a) and (b) of this section will not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken unless the Interior Board of Land Appeals determines that a suspension will not harm the interests of the lessor or that a bond has been submitted and accepted which is adequate to indemnify the lessor from loss or damage.

(e) *Effect of appeal on assessments and penalties.* (1) Except as provided in paragraph (e)(3) of this section, an appeal filed under paragraph (a) of this section will suspend the accumulation of additional daily assessments. However, the filing of an appeal will not bar BLM from assessing civil penalties under § 3163.2 in the event the operator has failed to abate the violation which resulted in the assessment. The Interior Board of Land Appeals may issue appropriate orders to coordinate the pending appeal and the pending civil penalty proceeding.

(2) Except as provided in paragraph (e)(3) of this section, an appeal filed under paragraph (b) of this section will suspend the accumulation of additional daily civil penalties.

(3) When an appeal is filed under paragraph (a) or (b) of this section, the State Director may, within 10 days of receipt of the notice of appeal, recommend that the BLM Director reinstate the accumulation of assessments and daily civil penalties until a final decision is rendered or until the violation is abated. The BLM Director may, if he/she determines that the public interest requires it, reinstate the accumulation(s) upon a finding that the violation is causing or threatening immediate substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the BLM Director does not act on the recommendation to reinstate the accumulation(s) within 45 days of the filing of the notice of appeal, the suspension will continue.

(f) *Judicial review.* Any person who is adversely affected by a final order of the Secretary under this section may seek review of the order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of civil penalty determinations only where a person has requested a hearing on the record, a waiver of such hearing precludes further review by the district court. Review by the district court will be on the administrative record only and not de novo. Such an action will be barred unless filed within 90 days after issuance of final decision.

PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS

104. The authority citation for part 3180 continues to read as follows:

Authority: 30 U.S.C. 181 and 226.

105. Section 3185.1 is revised to read as follows:

§ 3185.1 Appeals.

Any party adversely affected by an instruction, order, or decision issued under this part may appeal it in accordance with parts 4 and 1840 of this title.

PART 3200—GEOTHERMAL RESOURCES LEASING: GENERAL

106. The authority citation for part 3200 is revised to read as follows:

Authority: 30 U.S.C. 1023.

107. In § 3205.3–9, the sixth, seventh, and eighth sentences, are revised to read as follows:

§ 3205.3–9 Readjustments.

* * * If the lessee files a protest in accordance with parts 4 and 1840 of this title, and no agreement can be reached between BLM and the lessee within a period of 60 days, the lease may be terminated by either party to the lease. Any party adversely affected by such a lease termination may appeal the termination in accordance with parts 4 and 1840 of this title. If the lessee files a protest to the proposed readjusted terms and conditions, the existing terms and conditions will remain in effect until there has been an agreement between BLM and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated, except payments of any proposed readjusted rentals and royalties must be paid in the timely manner prescribed in these regulations and may be paid under protest. The readjusted terms and conditions will be effective as of the end of the term being adjusted. * * *

PART 3240—RULES GOVERNING LEASES

108. The authority citation for part 3240 is revised to read as follows:

Authority: 30 U.S.C. 1023.

109. Section 3244.3 is revised to read as follows:

§ 3244.3 Cancellation of lease for noncompliance with regulations or lease terms; notice; hearing.

(a) A lease may be canceled by BLM for any violation of these regulations, the regulations in part 3260 of this title, or the lease terms, 30 days after the lessee receives notice from BLM of the violation, unless the lessee corrects the violation within that time period, or the violation is one that cannot be corrected within the notice period and the lessee has in good faith begun to correct the violation within the notice period and thereafter continues to diligently complete the correction.

(b) Any lessee may seek a hearing before an administrative law judge regarding the violation or the proposed cancellation of lease. The lessee must request a hearing in accordance with parts 4 and 1840 of this title within the 30-day period after notice. BLM will extend the time in which a lessee may correct a violation of the regulations or of the lease terms to a date which is 30 days after the lessee receives the administrative law judge's decision on the hearing if the administrative law judge finds that a violation has occurred.

PART 3250—UTILIZATION OF GEOTHERMAL RESOURCES

110. The authority citation for part 3250 is revised to read as follows:

Authority: 30 U.S.C. 1001–1025.

111. Section 3250.9 is amended by revising paragraph (b) to read as follows:

§ 3250.9 Relinquishment, expiration, or termination of license.

* * * * *

(b) A license issued under this part may be terminated by written order of BLM for any violation of any applicable regulation or any license term or condition, after 30 days notice. However, the termination will not take effect if within the 30-day notice period either the violation is corrected or the licensee has commenced in good faith to correct the violation and will thereafter proceed diligently to correct the violation where the violation is such that it cannot be corrected within the notice period. Any licensee who may be adversely affected by BLM's termination order may appeal the order and is entitled to a hearing regarding the violation and the termination in accordance with parts 4 and 1840 of this title if the appeal is filed within the 30-day notice period. If an appeal is filed on time, BLM will extend the time in which the licensee may begin to correct the violation to a date which is 30 days after a final decision is rendered if it is found that a violation exists.

PART 3260—GEOTHERMAL RESOURCES OPERATIONS

112. The authority citation for part 3260 is revised to read as follows:

Authority: 30 U.S.C. 1023.

113. Section 3266.1 is revised to read as follows:

§ 3266.1 Appeals.

(a) Any party adversely affected by a decision of BLM made under this part may appeal that decision in accordance with parts 4 and 1840 of this title.

(b) All decisions or approvals of BLM under this part will go into effect immediately and remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

PART 3280—GEOTHERMAL RESOURCES UNIT AGREEMENTS: UNPROVEN AREAS

114. The authority citation for part 3280 is revised to read as follows:

Authority: 30 U.S.C. 1001–1025.

115. Section 3285.1 is revised to read as follows:

§ 3285.1 Appeals.

Any party adversely affected by an order or decision made under this part may appeal the order or decision in accordance with parts 4 and 1840 of this title.

PART 3410—EXPLORATION LICENSES

116. The authority citation for part 3410 is revised to read as follows:

Authority: 30 U.S.C. 210(b).

117. In § 3410.3–1, paragraphs (g)(1) and (g)(2) are revised to read as follows:

§ 3410.3–1 Issuance and termination of an exploration license.

* * * * *

(g) * * *

(1) BLM may adjust the terms and conditions of the exploration license, or

(2) BLM may direct adjustment in or approve modification of the exploration plan. Any licensee who is adversely affected by BLM's adjustment or modification decision may appeal the decision in accordance with parts 4 and 1840 of this title or may relinquish the exploration license.

* * * * *

PART 3420—COMPETITIVE LEASING

118. The authority citation for part 3420 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 1272 and 1273; and 43 U.S.C. 1733 and 1740.

119. Section 3427.2 is amended by revising paragraphs (j) and (k) to read as follows:

§ 3427.2 Procedures.

* * * * *

(j) If the surface owner fails to provide evidence of qualifications in response to surface owner consultation or to a written request for such evidence, and if BLM is unable to independently

determine whether or not the surface owner is qualified, BLM will presume that the surface owner is unqualified. BLM will notify the surface owner in writing of this determination and will provide the surface owner an opportunity to appeal the determination.

(k) Any surface owner determined to be unqualified by decision of the field official of the surface management agency will have 30 days from the date of receipt of such decision in which to appeal the decision in accordance with parts 4 and 1840 of this title.

PART 3430—NONCOMPETITIVE LEASES

120. The authority citation for part 3430 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 1260, 1272 and 1273; and 43 U.S.C. 1733 and 1740.

121. Section 3430.5–2 is revised to read as follows:

§ 3430.5–2 Appeals, lack of showing.

(a) Any applicant whose application is rejected because the applicant has not shown the existence of commercial quantities of coal may appeal the decision to reject the application in accordance with parts 4 and 1840 of this title.

(b) The applicant is entitled to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged that the facts in the application are sufficient to show an entitlement to a lease.

(c) In such a hearing, the applicant bears both the burden of going forward and the burden of proof to show, by a preponderance of evidence, that commercial quantities of coal exist in the proposed lease area.

PART 3450—MANAGEMENT OF EXISTING LEASES

122. The authority citation for part 3450 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 1272 and 1273; and 43 U.S.C. 1733 and 1740.

123. In § 3451.2, paragraph (d) is revised to read as follows:

§ 3451.2 Notification of readjusted lease terms.

* * * * *

(d) Any lessee adversely affected by the readjustment decision may appeal the decision in accordance with parts 4 and 1840 of this title; and

* * * * *

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

124. The authority citation for part 3470 is revised to read as follows:

Authority: 30 U.S.C. 189 and 30 U.S.C. 359.

125. Section 3472.1–2 is amended by revising paragraphs (e)(4)(ii) and (iii) to read as follows:

§ 3472.1–2 Special leasing qualifications.

* * * * *

(e) * * *

(4) * * *

(ii) Once a lease has been issued, or transfer approved, to an entity that qualifies under paragraph (e)(4)(i) of this section, an adverse decision by BLM on the pending action, or the withdrawal of the pending action by the applicant, will result in termination of the lease or recision of the transfer approval. An entity who is adversely affected by such a decision may appeal the decision in accordance with parts 4 and 1840 of this title. Such a decision will go into effect immediately and remain in effect while any appeal is pending unless a stay is granted in accordance with § 4.21(b) of this title. The possibility of lease termination will be included as a special stipulation in every lease issued to an entity that qualifies under paragraph (e)(4) of this section.

(iii) The entity will not qualify for lease issuance or transfer under paragraph (e)(4)(i) of this section while an appeal is pending before the Office of Hearings and Appeals regarding an adverse decision by BLM on any of the actions described in paragraph (e)(4)(i) of this section.

* * * * *

PART 3480—COAL EXPLORATION AND MINING OPERATIONS RULES

126. The authority citation for part 3480 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 30 U.S.C. 1266 and 1273; and 43 U.S.C. 1461, 1733 and 1740.

137. Section 3486.4 is revised to read as follows:

§ 3486.4 Appeals.

Any party adversely affected by a decision or order issued by BLM under this part may appeal the decision or order in accordance with parts 4 and 1840 of this title.

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

128. The authority citation for part 3500 is revised to read as follows:

Authority: 30 U.S.C. 189; 30 U.S.C. 359; 43 U.S.C. 1733 and 1740; 30 U.S.C. 192c; 30 U.S.C. 293; 16 U.S.C. 460n–5; 16 U.S.C. 460q–1; 16 U.S.C. 460dd–2; 16 U.S.C. 460mm–2—460mm–3; 31 U.S.C. 9701.

129. Section 3500.4 is revised to read as follows:

§ 3500.4 Appeals.

Any party adversely affected by a decision of BLM made under this part may appeal the decision in accordance with parts 4 and 1840 of this title.

130. In § 3500.9–1, paragraph (c) is revised to read as follows:

§ 3500.9–1 Federal lands administered by agencies outside of the Department of the Interior.

* * * * *

(c) If, as provided by statute, a surface managing agency has required that certain stipulations be included in a lease or permit or has consented, or objected or refused to consent to leasing or permitting, any applicant adversely affected by the surface managing agency decision may appeal the decision only in accordance with the administrative appeals procedures provided for by the particular surface managing agency.

PART 3510—PHOSPHATE

131. The authority citation for part 3510 is revised to read as follows:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 43 U.S.C. 1701 et seq.; 47 Stat. 1487; 43 U.S.C. 387; 16 U.S.C. 460n et seq.; 16 U.S.C. 460q et seq.; 16 U.S.C. 90c et seq.; 16 U.S.C. 460dd et seq.; 16 U.S.C. 460mm–2—460mm–4; 31 U.S.C. 9701.

132. Section 3511.4 is revised to read as follows:

§ 3511.4 Readjustment.

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such period. Before the expiration of each 20-year period, BLM will send proposed readjusted terms and conditions to the lessee. If BLM fails to send the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease will have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless within 60 days after receiving them, the lessee files a protest in accordance with part 4 and 1840 of this title to the readjusted terms and conditions or relinquishes the lease. BLM will issue a decision responding to the protest, and if the response is

adverse to the lessee, the lessee may appeal the decision in accordance with parts 4 and 1840 of this title. The effective date of the readjustment will not be affected by the filing of a protest or appeal.

(c) Except as provided in this paragraph, the readjusted terms and conditions will be effective pending a response to the protest or the outcome of the appeal provided for in paragraph (b) of this section unless BLM provides otherwise in the decision. Upon the filing of a protest or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals will be suspended pending the outcome of the protest or appeal. However, any such increased royalties, minimum royalties and rentals will accrue while the protest or appeal is pending, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the protest or on appeal, the accrued balance, plus interest at the rate specified for late payment by the Service will be payable. (See part 3590 of this title.) Pending the decision on the protest or the appeal, the royalties, minimum royalties and rentals will be payable as specified by the lease terms and conditions in effect prior to the end of the 20-year period.

133. Section 3513.4 is revised to read as follows:

§ 3513.4 Rejection of application.

(a) BLM will reject an application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of phosphate;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the lease applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of phosphate was discovered.

PART 3520—SODIUM

134. The authority citation for part 3520 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 43 U.S.C. 1701 *et seq.*; 47 Stat. 1487; 43 U.S.C. 387; 16 U.S.C. 460n *et seq.*; 16 U.S.C. 460q *et seq.*; 16 U.S.C. 90c *et seq.*; 16 U.S.C. 460dd *et seq.*; 16 U.S.C. 460mm–2—460mm–4; 31 U.S.C. 9701.

135. Section 3523.4 is revised to read as follows:

§ 3523.4 Rejection of application.

(a) BLM will reject the application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of sodium and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of sodium or any sodium compound was discovered and that the lands are chiefly valuable therefor.

PART 3530—POTASSIUM

136. The authority citation for part 3530 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 43 U.S.C. 1701 *et seq.*; 43 U.S.C. 387; 16 U.S.C. 460n *et seq.*; 16 U.S.C. 460q *et seq.*; 16 U.S.C. 90c *et seq.*; 16 U.S.C. 460dd *et seq.*; 16 U.S.C. 460mm–2—460mm–4; 31 U.S.C. 9701.

137. Section 3531.4 is revised to read as follows:

§ 3531.4 Readjustment.

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such period. Prior to the expiration of each 20-year period, BLM will send proposed readjusted terms and conditions to the lessee. If BLM fails to send the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease will have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files a protest of the readjusted terms in accordance with parts 4 and 1840 of this title or relinquishes the lease. BLM will issue a decision responding to the protest, and if the response is adverse to the lessee, the lessee may appeal the decision in accordance with parts 4 and 1840 of this title. The effective date of the readjustment will not be affected by the filing of a protest or appeal.

(c) Except as provided in this paragraph, the readjusted lease terms and conditions will be effective pending the outcome of the protest or the appeal provided for in paragraph (b) of this section unless BLM provides otherwise. Upon the filing of a protest or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals will be suspended pending the outcome of the protest or appeal. However, any such increased royalties, minimum royalties and rentals will accrue while the protest or appeal is pending, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the protest or appeal, the accrued balance, plus interest at the rate specified for late payment by the Service will be payable (See part 3590). Pending the decision on the protest or appeal, the royalties, minimum royalties and rentals will be payable as specified by the lease terms and conditions in effect prior to the end of the 20-year period.

138. Section 3533.4 is revised to read as follows:

§ 3533.4 Rejection of application.

(a) BLM will reject an application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of potassium and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of potassium or any potassium compound was discovered

and that the lands are chiefly valuable therefor.

PART 3540—SULPHUR

139. The authority citation for part 3540 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351–359; 43 U.S.C. 1701 *et seq.;* 47 Stat. 1487; 43 U.S.C. 387; 16 U.S.C. 460n *et seq.;* 16 U.S.C. 460q *et seq.;* 16 U.S.C. 90c *et seq.;* 16 U.S.C. 460dd *et seq.;* 16 U.S.C. 460mm–2—460mm–4; 31 U.S.C. 9701.

140. Section 3543.4 is revised to read as follows:

§ 3543.4 Rejection of application.

(a) BLM will reject an application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of sulphur and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of sulphur was discovered and that the lands are chiefly valuable therefor.

PART 3550—''GILSONITE'' (INCLUDING ALL VEIN-TYPE SOLID HYDROCARBONS)

141. The authority citation for part 3550 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351–359; 43 U.S.C. 1701 *et seq.;* 31 U.S.C. 9701.

142. Section 3551.4 is revised to read as follows:

§ 3551.4 Readjustment.

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of that period. Before the expiration of each 20-year period, BLM will send proposed readjusted terms and conditions to the lessee. If BLM fails to send the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease will have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files a protest of the readjusted terms in accordance with parts 4 and 1840 of this title or relinquishes the lease. BLM will issue a decision responding to the protest, and if the response is adverse to the lessee, the lessee may appeal the decision in accordance with parts 4 and 1840 of this title. The effective date of the readjustment will not be affected by the filing of a protest or an appeal.

(c) Except as provided in this paragraph, the readjusted lease terms and conditions will be effective pending a response to the protest or appeal provided for in paragraph (b) of this section unless BLM provides otherwise. Upon the filing of a protest or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals will be suspended pending the outcome of the protest or appeal. However, any such increased royalties, minimum royalties and rentals will accrue during the pendency of the protest or appeal, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the protest or appeal, the accrued balance, plus interest at the rate specified for late payment by the Service will be payable (See part 3590). Pending the decision on the protest or appeal, the royalties, minimum royalties and rentals will be payable as specified by the lease terms and conditions in effect before the end of the 20-year period.

143. Section 3553.4 is revised to read as follows:

§ 3553.4 Rejection of application.

(a) BLM will reject an application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of ''Gilsonite'';

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of ''Gilsonite'' was discovered.

PART 3560—HARDROCK MINERALS

144. The authority citation for part 3560 is revised to read as follows:

Authority: 43 U.S.C. 1701 *et seq.;* 30 U.S.C. 192c; 16 U.S.C. 508(b); 47 Stat. 1487; 43 U.S.C. 387; 16 U.S.C. 460n *et seq.;* 16 U.S.C. 460q *et seq.;* 16 U.S.C. 90c *et seq.;* 16 U.S.C. 460dd *et seq.;* 16 U.S.C. 460mm–2—460mm–4; 31 U.S.C. 9701.

145. Section 3563.4 is revised to read as follows:

§ 3563.4 Rejection of application.

(a) BLM will reject an application for a preference right lease if it determines that:

(1) The applicant did not discover a valuable deposit of any mineral covered by the prospecting permit;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) The applicant has a right to a hearing before an administrative law judge in accordance with parts 4 and 1840 of this title if the applicant has alleged facts in the application that are sufficient to show an entitlement to a lease.

(c) At the hearing, the applicant will have both the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that a valuable deposit of the mineral(s) was discovered.

PART 3590—SOLID MINERALS (OTHER THAN COAL) EXPLORATION AND MINING OPERATIONS

146. The authority citation for part 3590 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351–359; 42 U.S.C. 4331 *et seq.;* 43 U.S.C. 1701 *et seq.;* 30 U.S.C. 192c; 16 U.S.C. 508(b); 30 U.S.C. 291–293; 47 Stat. 1487; 43 U.S.C. 387; 16 U.S.C. 460n *et seq.;* 16 U.S.C. 90c *et seq.;* 16 U.S.C. 460dd *et seq.;* 16 U.S.C. 460mm–2—460mm–4; 31 U.S.C. 9701; 95 Stat. 1070; 35 Stat. 315; 95 Stat. 1070; 25 U.S.C. 396; 25 U.S.C. 396a–396q; 25 U.S.C. 2101 *et seq.*

147. In § 3598.4, paragraph (c) is revised to read as follows:

§ 3598.4 Enforcement orders.

* * * * *

(c) If, in BLM's judgment, a failure to comply with established requirements threatens health, safety, or the environment, BLM may, in writing or orally with written confirmation, order

the suspension of operations without prior notice in accordance with § 1844.11(c) of this title.

148. Section 3598.5 is revised to read as follows:

§ 3598.5 Appeals.

Any party adversely affected by an order or decision made under this part may appeal the order or decision in accordance with parts 4 and 1840 of this title.

PART 3710—PUBLIC LAW 167; ACT OF JULY 1955

149. An authority citation for part 3710 is added to read as follows:

Authority: 30 U.S.C. 601; 61 Stat. 681.

150. Section 3713.1 is revised to read as follows:

§ 3713.1 Hearing procedures.

The procedures to be followed for hearings and appeals are set forth in parts 4 and 1840 of this title.

151. In § 3715.7–1, paragraph (a)(1)(ii) is revised to read as follows:

§ 3715.7–1 What types of enforcement action can BLM take if I do not meet the requirements of this subpart?

* * * * *

(a) * * *

(1) * * *

(ii) an immediate, temporary suspension in accordance with 1844.11(c) of this title is necessary to protect health, safety, or the environment.

* * * * *

152. Section 3715.9 is revised to read as follows:

§ 3715.9 What appeal rights do I have?

If you are adversely affected by a BLM decision, order, or determination made under this subpart, you may appeal the decision, order or determination in accordance with parts 4 and 1840 of this title.

153. Section 3715.9–1 is revised to read as follows:

§ 3715.9–1 Does an appeal suspend a BLM decision?

(a) An immediate, temporary suspension issued under § 3715.7–1(a) will go into effect immediately and will, in accordance with part 1840 of this title, remain in effect while an appeal is pending unless a stay is granted in accordance with § 4.21(b) of this title.

(b) The effect of all other decisions, orders, or determinations under this subpart will be stayed in accordance with part 1840 of this title.

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL

154. The authority citation for part 3730 continues to read as follows:

Authority: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 43 U.S.C. 28f–k; 107 Stat. 405.

155. Section 3736.2 is revised to read as follows:

§ 3736.2 Hearing; notice of contest.

(a) If a hearing is to be held, notice of the hearing will be delivered personally or by registered mail or certified mail to the locator of the placer claim. The notice will give the time and place of hearing. The procedures to be followed for the hearing are set forth in parts 4 and 1840 of this title. No publication of the notice will be required but a copy of the notice must be posted in the BLM State and District offices for a period of not less than 30 days before the date set for the hearing.

(b) Any party, other than a Federal agency, who would like to appear and testify at a hearing in protest of a placer mining operation, must file a written notice of protest in the proper offices where the notice of hearing is posted. The notice of protest must be accompanied by a $10 filing fee and contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining claim. Each notice of protest must be filed within the period of time specified in the notice of hearing. BLM will forward a copy of each notice of protest that is filed to the mining locator prior to the hearing.

(c) Following the hearing, any party adversely affected by a decision of the administrative law judge may appeal the decision in accordance with part 4 of this title. Each decision by an administrative law judge and each decision on an appeal will provide for the issuance of an appropriate order as provided in section 2(b) of the Act after the decision becomes final. A certified copy of any order issued must be filed in the same State or county office in which the location notice has been filed. Any order permitting mining operations must be filed at the expense of the mining locator.

PART 3740—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT

156. An authority citation for part 3740 is added to read as follows:

Authority: 30 U.S.C. 521; 68 Stat. 708.

157. Section 3743.1 is revised to read as follows:

§ 3743.1 Hearing procedures.

The procedures to be followed for hearings and appeals are set forth in parts 4 and 1840 of this title.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

158. The authority citation for part 3800 continues to read as follows:

Authority: 16 U.S.C. 447; 16 U.S.C. 347–354; 16 U.S.C. 460y *et seq.;* 16 U.S.C. 473, 478–482; 16 U.S.C. 1901 and 1907; 30 U.S.C. 22 *et seq.;* 30 U.S.C. 122, 161 and 162; 30 U.S.C. 242; 31 U.S.C. 9701; 43 U.S.C. 2; 43 U.S.C. 154; 43 U.S.C. 299 and 300; 43 U.S.C. 1201; 43 U.S.C. 1474; 43 U.S.C. 1701 *et seq.;* 50 U.S.C. Appendix 565; 62 Stat. 162; 100 Stat. 3457–3468; 107 Stat. 60; and 30 U.S.C. 28f–k, 107 Stat. 405.

159. Section 3802.5 is revised to read as follows:

§ 3802.5 Appeals.

(a) Any party adversely affected by a decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) In any case involving lands under the jurisdiction of any agency or office other than BLM, if a party appeals a decision of that agency or office which relates to mineral development in a wilderness study area, the appellant must serve the other agency or office with a copy of the notice of appeal and any statement of reasons, written arguments, and briefs.

160. Section 3809.4 is revised to read as follows:

§ 3809.4 Appeals.

(a) Any party adversely affected by a decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) In order for an appeal of a decision made under this subpart to be considered, a notice of appeal must be filed in writing with the BLM office where the decision was made within 30 days after the date of receipt of the decision. All decisions under this subpart will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

(c) The written appeal must contain:

(1) The name and mailing address of the appellant;

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded in accordance with subpart 3833 of this title which are subject to the appeal; and

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

161. The citation for the authority for part 3810 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.;* 43 U.S.C. 1201 and 1740.

162. Section 3816.3 is revised to read as follows:

§ 3816.3 Recommendations of Bureau of Reclamation to open lands.

If BLM receives an application and finds it to be satisfactory, BLM will send the duplicate to the Bureau of Reclamation and request a report and recommendation. If the Bureau of Reclamation recommends that the application be rejected, BLM will reject the application. Any party adversely affected by the rejection decision may appeal the decision in accordance with parts 4 and 1840 of this title.

PART 3830—LOCATION OF MINING CLAIMS

163. The authority citation for part 3830 continues to read as follows:

Authority: 30 U.S.C. 22 and 28; 43 U.S.C. 1201; 31 U.S.C. 9701; 16 U.S.C. 1901 and 1907; 43 U.S.C. 1740 and 1744; 30 U.S.C. 242; 50 U.S.C. Appendix 565; 107 Stat. 60; 107 Stat. 405.

164. Section 3833.5 is amended by revising paragraphs (d) and (h) to read as follows:

§ 3833.5 Effect of recording and filing.

* * * * *

(d) In the case of any action or contest initiated by the United States affecting an unpatented mining claim, mill, or tunnel site, only those owners who have recorded their claim or site under § 3833.1–2 or filed a notice of transfer of interest under § 3833.3 will be considered by the United States as parties whose rights are affected by the action or contest and will be personally notified and served by certified mail sent to their last address of record. As provided in subpart 1810 of this title, all owners of record with BLM will be personally notified and served by certified mail, return receipt requested, sent to their last address of record. Such owners will be deemed to have been served if the certified mail was delivered to that address of record, regardless of whether the certified mail was in fact received by them. The notice provisions of this subpart are not applicable to the procedures for public notice of a mineral patent application required under part 3860 of this title.

* * * * *

(h) Any party adversely affected by a decision of BLM made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

PART 3870—ADVERSE CLAIMS, PROTESTS AND CONFLICTS

165. An authority citation for part 3870 is added to read as follows:

Authority: 30 U.S.C. 22 *et seq.,* 43 U.S.C. 1740 *et seq.,* 43 U.S.C. 1201 *et seq.*

166. In § 3872.1, the first sentence of paragraph (a) is revised to read as follows:

§ 3872.1 Protest against mineral applications.

(a) At any time prior to the issuance of patent, a protest may be filed in accordance with parts 4 and 1840 of this title against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. * * *

167. Section 3872.2 is revised to read as follows:

§ 3872.2 Procedure in contest cases.

The procedures to be followed in all contests and hearings to determine the character of lands are in parts 4 and 1840 of this title.

168. In § 3872.4 paragraph (c) is revised to read as follows:

§ 3872.4 Procedure to dispute record character of land.

* * * * *

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and will be conducted in accordance with parts 4 and 1840 of this title.

PART 4200—GRAZING ADMINISTRATION; ALASKA; LIVESTOCK

169. The authority citation for part 4200 is revised to read as follows:

Authority: 25 U.S.C. 500k; 43 U.S.C. 1740.

170. Section 4240.1 is revised to read as follows:

§ 4240.1 Protests.

Protests against an application for a lease must be filed with the appropriate BLM office in accordance with parts 4 and 1840 of this title. A protest must disclose all facts upon which it is based, describe the lands involved, and be accompanied by evidence of service of a copy of the protest on the applicant. If the person filing the protest wants to lease all or part of the land embraced in the application against which the protest is filed, the protest must be accompanied by an application for a grazing lease.

PART 4300—GRAZING ADMINISTRATION; ALASKA; REINDEER

171. The authority citation for part 4300 is revised to read as follows:

Authority: 43 U.S.C. 315; 43 U.S.C. 1740.

172. Section 4330.1 is revised to read as follows:

§ 4330.1 Protests.

Protests against an application for a grazing permit must be filed with the appropriate BLM office in accordance with parts 4 and 1840 of this title. The protest must disclose all facts upon which it is based, describe the lands involved, and be accompanied by evidence of service of a copy of the protest upon the applicant. If the person filing the protest wants to obtain a grazing permit for all or part of the land embraced in the application against which the protest is filed, the protest must be accompanied by an application for a grazing permit.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

173. The authority citation for part 4700 continues to read as follows:

Authority: 16 U.S.C. 1331–1340; 18 U.S.C. 47; 43 U.S.C. 315 and 1740.

174. Section 4770.3 is revised to read as follows:

§ 4770.3 Administrative remedies.

(a) Any party who is adversely affected by a decision of BLM made under this part may appeal the decision in accordance with parts 4 and 1840 of this title. Appeals and petitions for stay of a decision of BLM must be filed within 30 days of receipt of the decision by the adversely affected party.

(b) Notwithstanding the provisions of § 4.21(a) of this title, BLM may provide that the decision to cancel a private maintenance and care agreement will be effective upon issuance or on a date established in the decision so as to allow repossession of wild horses or burros from adopters to protect the animals' welfare.

(c) Notwithstanding the provisions of § 4.21(a) of this title, BLM may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving

ecological balance and multiple use relationship will be effective upon issuance or on a date established in the decision.

PART 5000—ADMINISTRATION OF FOREST MANAGEMENT DECISIONS

175. The authority citation for part 5000 is revised to read as follows:

Authority: 43 U.S.C. 1181(a); 30 U.S.C. 601 *et seq.;* 43 U.S.C. 1740.

176. Section 5003.1 is revised to read as follows:

§ 5003.1 Effect of decisions; general.

The filing of an appeal in accordance with parts 4 and 1840 of this title will not automatically stay the effect of a decision governing or relating to forest management made under §§ 5003.2 and 5003.3.

177. Section 5003.3 is revised to read as follows:

§ 5003.3 Protests.

(a) Protests of a forest management decision, including advertised timber sales, must be made in accordance with parts 4 and 1840 of this title within 15 days of the publication of a notice of decision or notice of sale in a newspaper of general circulation.

(b) Protests must be filed with BLM and must contain a written statement of reasons for protesting the decision.

(c) Protests received more than 15 days after the publication of the notice of decision or the notice of sale are not timely filed and will not be considered.

(d) Upon timely filing of a protest, BLM will reconsider the decision to be implemented in light of the statement of reasons for the protest and other pertinent information available to BLM.

(e) At the conclusion of the review, BLM will provide the protesting party with a copy of the written decision.

(f) Upon denial of a protest filed under paragraph (a) of this section, BLM may proceed with implementation of the decision.

PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

178. The authority citation for part 5470 continues to read as follows:

Authority: 30 U.S.C. 601 *et seq.,* 43 U.S.C. 1181e.

179. Section 5475.7 is amended by revising paragraph (a) to read as follows:

§ 5475.7 Protests and appeals.

(a) Any appeal filed prior to the execution of a buy-out agreement must be in accordance with the provisions of parts 4 and 1840 of this title.

PART 5510—FREE USE OF TIMBER

180. The authority citation for part 5510 is revised to read as follows:

Authority: 61 Stat. 681; 69 Stat. 367; 48 Stat. 1269; 30 Stat. 414; 30 U.S.C. 189 and 601 *et seq.;* 43 U.S.C. 315, 1201 and 1740; and 48 U.S.C. 423.

181. In § 5511.1–4, paragraphs (a)(2) and (a)(4) are revised to read as follows:

§ 5511.1–4 Free use of timber upon oil and gas leases.

(a) * * *

(2) *Notice of rejection of application; right of appeal.* The applicant will be notified by registered mail if the permit applied for is not granted. The applicant is allowed 30 days from service of notice within which to appeal from the decision in accordance with parts 4 and 1840 of this title.

* * * * *

(4) *Notice of action on application.* The applicant will be notified by registered mail if the permit applied for is not granted. The settler or homestead entryman will be notified in a like manner before the issuance of the permit if protests are filed in accordance with parts 4 and 1840 of this title against the issuance of the permit.

PART 8370—USE AUTHORIZATIONS

182. The authority citation for part 8370 continues to read as follows:

Authority: 16 U.S.C. 460l–6a, 16 U.S.C. 670(g–n), 16 U.S.C. 1271–1287, 6 U.S.C. 1241–1249, 43 U.S.C. 1201, 43 U.S.C. 1701 *et seq.*

183. Section 8372.6 is revised to read as follows:

§ 8372.6 Appeals.

(a) Any party adversely affected by a decision of BLM made under this part may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) All decisions of BLM made under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

PART 9180—CADASTRAL SURVEY

184. The authority citation for part 9180 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 40 Stat. 965, as amended; and 43 U.S.C. 773.

185. In § 9185.2–2, paragraph (b) is revised to read as follows:

§ 9185.2–2 Lands omitted from original survey.

* * * * *

(b) *Form of notice.* No particular form of notice is required. The notice must make it clear, however, that the land covered by the application is contended to be public land owned by the United States and subject to survey and administration as such, and that any protest against the proposed survey should be filed with the appropriate State Director in accordance with parts 4 and 1840 of this title. It must be shown what particular surveyed lands opposite the island, or adjoining the unsurveyed land, are owned by the adjacent land owner on whom the notice is served.

186. Section 9185.3–3 is revised to read as follows:

§ 9185.3–3 Majority of land owners.

A majority of the settlers in each township are required to join in the application, and the endorsements of the entrymen and owners, including the State, whose holdings represent the major part of the area entered or patented must appear, with a description opposite each name of the lands actually occupied, entered, or owned, and a statement as to whether the applicant is a settler, entryman, or owner thereof. If an entryman or owner, including the State, has failed for any reason to join in the application, evidence of service of notice upon the entryman or owner is required. Notice must be given for at least 30 days in advance of the filing of the application in order that the entryman or owner may be afforded ample opportunity to protest in accordance with parts 4 and 1840 of this title against the granting of the resurvey.

PART 9230—TRESPASS

187. The authority citation for part 9230 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 43 U.S.C. 1701 *et seq.;* 18 U.S.C. 1851–1858.

188. In § 9239.5–3, paragraph (f)(3) is revised to read as follows:

§ 9239.5–3 Coal.

* * * * *

(f) * * *

(3) No penalty under this section may be assessed unless the person is given notice and an opportunity for a hearing with respect to the violation in accordance with parts 4 and 1840 of this title.

[FR Doc. 96–26397 Filed 10–16–96; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–202; RM–8879]

Radio Broadcasting Services; Mount Vernon, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Rock Communications of Mount Vernon, proposing the allotment of Channel 270A at Mount Vernon, Kentucky, as the community's second local FM transmission service. Channel 270A can be allotted to Mount Vernon in compliance with the Commission's minimum distance separation requirements with site restriction of 9.3 kilometers (5.8 miles) west to avoid short-spacings to the licensed sites of Station WKYM(FM), Channel 269A, Monticello, Kentucky, and Station WLJC(FM), Channel 271A, Beattyville, Kentucky, at petitioner's requested site. The coordinates for Channel 270A at Mount Vernon are North Latitude 37–22–29 and West Longitude 84–26–41.

DATES: Comments must be filed on or before November 25, 1996, and reply comments on or before December 10, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–202, adopted September 27, 1996, and released October 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–26520 Filed 10–16–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–154; RM–8834]

Radio Broadcasting Services; Wynnewood, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission dismisses the request of Bea Kimbrough seeking the allotment of Channel 291A to Wynnewood, OK, as the community's first local aural transmission service. Kimbrough filed comments withdrawing her interest in applying for the channel and no other parties filed comments supporting the allotment. With this action, this proceeding is terminated.

DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–154, adopted September 27, 1996, and released October 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–26518 Filed 10–16–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–96–41]

RIN 2125–AE05

Parts and Accessories Necessary for Safe Operation; Development of a North American Standard for Protection Against Shifting or Falling Cargo

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA is considering proposing amendments to its regulations concerning cargo securement requirements for commercial motor vehicles engaged in interstate commerce. The FHWA intends to consider adopting new cargo securement guidelines that will be based upon the results of a multi-year comprehensive research program to evaluate current regulations and industry practices. The FHWA is also requesting comments on the process to be used in developing these preliminary cargo securement guidelines. The FHWA is currently working on this research program with the Canadian Council of Motor Transport Administrators (CCMTA), State and Provincial agencies responsible for motor carrier safety activities, the Commercial Vehicle Safety Alliance (CVSA), and U.S. and Canadian industry groups. This research program is scheduled for completion by the end of 1996 with the final report to be published shortly thereafter.

DATES: Comments must be received on or before December 16, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–96–41, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of

comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1993, the House of Representatives held a hearing concerning the adequacy of Federal regulations on cargo securement as well as the enforcement of those regulations (Truck Cargo Securement Regulations and Enforcement, 1993: Hearing Before the Subcommittee on Investigations and Oversight of the House of Representatives' Committee on Public Works and Transportation, 103rd Cong., 1st Sess. 32 (1993)). A copy of the July 1993 proceeding is included in the docket file. The hearing was prompted by several cargo securement accidents that occurred in New York between 1990 and 1993. During the hearing, the Federal Highway Administrator (the Administrator) indicated that the Ontario Ministry of Transportation had requested that the FHWA review a proposal prepared on behalf of the CCMTA—a non-profit association of senior officials from Federal, Provincial, and Territorial departments and agencies responsible for the administration, regulation and control of motor vehicle transportation and highway safety—for a research program to evaluate cargo securement regulations and industry practices. The Administrator informed the subcommittee that the FHWA would participate in the research effort and consider incorporating the results of the research into the Federal Motor Carrier Safety Regulations (FMCSRs).

A cargo securement research working group was organized by the CCMTA and the Ontario Ministry of Transportation to discuss the research methodology with industry groups and Federal, State, and Provincial governments in the United States and Canada. The working group, which included representatives from the FHWA, Transport Canada (the Federal department responsible for developing and enforcing the regulatory aspects of motor vehicle and motor carrier safety), the CCMTA, the CVSA, several States and Provinces, and U.S. and Canadian industry, held its first meeting August 16–17, 1993, at the Downsview, Ontario offices of the Ontario Ministry of Transportation. A copy of the minutes from the meeting, including a list of attendees, is in the docket file. A report identifying the cargo securement issues to be examined through the research program and describing the research methodology to be used was published by the Ontario Ministry of Transportation in November of 1993. A copy of the report entitled ''A Proposal for Research to Provide a Technical Basis for a Revised National Standard on Load Security for Heavy Trucks'' is included in the docket file.

Research Reports

The research program involves the testing of trailer anchor points (i.e., stake pockets, D-rings, tensioning ratchets, etc.), the effect of binder type, chain size, and chain length on the tension of the tiedown assembly, equalization of tension in the spans of chain and webbing tiedowns, lateral and longitudinal movement of the cargo on tiedown tension, and blocking and bracing, friction between the load and the vehicle, or between individual articles being transported (e.g., concrete pipe, lumber products, etc.). The research program is also examining securement practices for transporting steel coils and intermodal cargo containers.

With the exception of the testing of the securement systems for steel coils, all of the laboratory work is scheduled for completion by September 1996. The tests involving steel coils are scheduled for completion by the end of 1996. Individual research reports will be issued covering each of the testing modules. The FHWA will publish notices in the Federal Register to announce the availability of the research reports. A comprehensive report covering each of the testing modules, and presenting conclusions and recommendations on cargo securement practices is expected to be published in June of 1997.

Standard Development Process

The preliminary efforts at developing the North American Cargo Securement Standard are currently being managed by a drafting group. The drafting group is developing the outline for the guidelines with most of the detailed performance criteria to be added as the research reports are completed. Membership in the drafting group includes representatives from the FHWA, Transport Canada, CCMTA, the Ontario Ministry of Transportation, Quebec Ministry of Transportation—Ontario and Quebec are conducting most of the research—and the CVSA. The CVSA is included in the drafting group because it is an organization of Federal, State, and Provincial government agencies and representatives from private industry in the United States, Canada, and Mexico dedicated to improvement of commercial vehicle safety. The membership of the drafting group is limited because it is impractical to draft a technical document with a larger number of participants.

As envisioned thus far, the process to be used for further developing this outline for the guidelines would involve a harmonization group which would review major portions of this outline as it is completed by the drafting group. Membership in the harmonization group would be open to all interested parties in the U.S., Canada, and Mexico. This process would be intended to ensure that all interested parties had an opportunity to participate in the development of the guidelines, and to identify and consider the concerns of the Federal, State, and Provincial governments, carriers, shippers, industry groups, and associations as well as safety advocacy groups and the general public. The harmonization group would hold public meetings at locations in the United States and Canada, during which drafts of the North American Cargo Securement Standard would be presented for review and comment. Representatives of the CCMTA and the CVSA would serve as co-chairpersons for the harmonization group and would organize the public meetings. The FHWA would announce the dates of these meetings in the Federal Register and maintain copies of the proceedings in this docket file. For individuals and groups unable to attend the meetings, the FHWA would, to the extent practicable, publish each version of the draft standard in the Federal Register. Further, the FHWA and/or CCMTA would post information on the INTERNET. Individuals and organizations with INTERNET electronic mail addresses would also be provided with the opportunity to have their names added to an electronic mailing list to receive information on the development of the standard.

After all interested parties had had the opportunity to comment, and their concerns had been considered, the final version of the North American Cargo Securement Standard would be published, and Federal, State, and Provincial governments throughout North America would be encouraged to adopt it. The FHWA intends, at that point, to propose in an NPRM that the existing cargo securement regulations

found at 49 CFR 393.100 through 393.106 be amended to adopt the standard.

Request for Comments

The FHWA is not offering for comment at this time any proposed language for the North American Cargo Securement Standard or amendments to the FMCSRs. The Agency is, however, soliciting comments on its decision to consider a rulemaking to overhaul its cargo securement regulations based upon the research program described and other published cargo-securement related research, such as Southern Illinois University's March 1995 report entitled ''Analysis of Rules and Regulations for Steel Coil Truck Transport.'' (A copy of this report is included in the docket file.) The FHWA anticipates that a notice of proposed rulemaking will be issued by the end of 1997 and, depending on the comments received, a final rule issued in 1998. The FHWA is also requesting comments on the process that would be used to develop the North American Cargo Securement Standard. Following a review of the docket comments sent in response to this notice, the FHWA will publish a notice that summarizes the comments and identifies any issues that warrant reconsideration of the standard development process.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. The FHWA has preliminarily determined that this rulemaking is a significant rulemaking action under the Department of Transportation's regulatory policies and procedures. The regulatory action being considered is not expected to have an annual effect on the economy of $100 million or more nor is it likely to adversely affect the economy in a material way. Due to the preliminary nature of this document and a lack of necessary information on costs, however, the FHWA is unable to evaluate fully the economic impact of the potential regulatory changes being considered in this rulemaking. Based upon the information received in response to this advance notice of proposed rulemaking, the FHWA intends to carefully consider the potential costs and benefits associated with establishing new cargo securement requirements. Comments, information, and data are solicited on the economic impact of establishing new requirements.

Regulatory Flexibility Act

Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate fully the effects of the potential regulatory changes on small entities. Based upon the information received in response to this advance notice of proposed rulemaking, the FHWA intends, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), to carefully consider the economic impacts of these potential changes on small entities. The FHWA solicits comments, information, and data on these impacts.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This document merely solicits comments on the FHWA's consideration of proposing to replace the existing cargo securement regulations with the North American Standard currently under development. No additional costs or burdens will be imposed on the States as a result of this notice and the States' ability to discharge traditional State government functions will not be affected.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that publication of this notice will not result in any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

Authority: 49 U.S.C. 31136, 31502; 49 CFR 1.48.

Issued on: October 8, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–26670 Filed 10–16–96; 8:45 am]

BILLING CODE 4910–22–P

Surface Transportation Board

49 CFR Part 1313

[STB Ex Parte No. 541]

Railroad Contracts

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board proposes to modify its existing regulations that govern contracts under 49 U.S.C. 10709 that are entered into between one or more rail carriers and one or more purchasers of rail services for the transportation of agricultural products. The proposed regulations eliminate provisions for filings that are no longer required, and otherwise largely continue existing filing and information disclosure requirements for agricultural contract summaries.

DATES: Comments are due on November 18, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 541 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution

Avenue, N.W., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred responsibility for regulating rail transportation to the Surface Transportation Board (Board). As pertinent here, the ICCTA also reduced regulatory oversight of rail transportation contracts in several significant ways. First, the ICCTA limited such oversight to contracts covering the transportation of agricultural products. Second, even as to contracts for agricultural products, the ICCTA eliminated the requirement that railroads file copies of the contracts with the Board; railroads need only file a summary of each contract. Third, the ICCTA removed various outdated provisions and procedural details, leaving it to the Board to maintain appropriate implementing procedures.

In an advance notice of proposed rulemaking in this proceeding, served March 26, 1996 (61 FR 13147), we invited interested persons to submit suggestions for appropriate regulations to implement 49 U.S.C. 10709, in place of the now-outdated rules at 49 CFR part 1313. In response, we received comments from shipper, carrier and rail employee interests. Shippers contended that the existing information disclosure requirements for agricultural contracts have proven to be adequate, and that all of them should be continued. Rail carriers proposed to reduce the information required to be disclosed.

After considering the comments, we propose to revise our regulations to eliminate provisions for filings that are no longer required, and otherwise to continue many of the existing filing and information disclosure requirements for agricultural contract summaries. Certain other minor revisions, such as changes to the time period within which the Board must take action against new and amended contracts, are proposed to reflect related changes made by the ICCTA. Additionally, we propose to add a new requirement that summaries for agricultural contracts be filed within seven days of the date of a contract or amended contract. In other respects, the proposed regulations do not significantly change the existing rules.

Availability

The full text of the proposed rules is available to all persons for a charge by phoning DC News and Data, Inc., at (202) 289–4357.

Request for Comments

We invite comments on all aspects of the proposed regulations. We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

The Board preliminarily concludes that these rules, if adopted, would not have a significant economic effect on a substantial number of small entities. One commenter, the Kansas Grain and Feed Association (KGFA), asserts that these regulations will have a significant economic impact on a substantial number of small entities by influencing its members' daily markets for the sale and purchase of agricultural products. KGFA's contention relates to the rail contracting practices permitted by both the former and new statutes, not the impact of these regulations. The proposed regulations merely reflect the modest changes effected by the ICCTA, and largely continue existing contract disclosure requirements for agricultural products.

The Board, nevertheless, seeks comment on whether there would be effects on small entities that should be considered, so that the Board can determine whether to prepare a regulatory flexibility analysis at the final rule stage.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1313

Agricultural products, Contract summaries, Rail carriers, Transportation contracts.

Decided: October 4, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–26438 Filed 10–16–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 100996A]

RIN 0648–AI63

Fisheries of the Exclusive Economic Zone off Alaska; Definition of Overfishing

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

ACTION: Notice of availability of amendments to fishery management plans; request for comments.

SUMMARY: These amendments would revise definitions of acceptable biological catch (ABC) and overfishing levels (OFLs) for groundfish species or species groups. The North Pacific Fishery Management Council (Council) has submitted Amendment 44 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) and Amendment 44 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) (FMPs). This action is necessary to ensure that conservation and management measures continue to be based upon the best scientific information available and is intended to advance the Council's ability to achieve, on a continuing basis, the optimum yield from fisheries under its jurisdiction. NMFS is requesting comments from the public on the proposed amendments, copies of which may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on Amendments 44/44 must be submitted by December 10, 1996.

ADDRESSES: Comments on the FMP amendments should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 44/44 and the environmental assessment (EA) and related economic analysis prepared for the proposed action are available from the North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, after receiving a fishery management plan or amendment, immediately publish a document in the Federal Register that the fishery management plan or amendment is available for public review and comment. This action constitutes such notice for Amendments 44/44 to the FMPs.

Section 301(a) of the Magnuson Act establishes national standards for fishery conservation and management and requires that all fishery management plans create management measures consistent with those standards. National Standard 1 requires that conservation and management measures shall ''prevent overfishing while achieving, on a continuing basis, the optimum yield'' from fisheries in Federal waters. National Standard 2 requires further that conservation and management measures be based on the best scientific information available.

The Magnuson Act includes a general definition of overfishing, but does not establish specific measures for determining where overfishing may occur. Pursuant to § 301(b) of the Magnuson Act, the Secretary of Commerce issued advisory guidelines (codified at 50 CFR part 600, subpart D) that provide comprehensive guidance for the development of fishery management plans and amendments. An amendment to the advisory guidelines (54 FR 30826, July 24, 1989) requires that fishery management plans specify an objective and measurable definition of overfishing for each managed stock or stock complex and provide for an analysis of how the definition was determined and how it relates to biological potential. The guidelines require that an overfishing definition will: (1) Have sufficient scientific merit, (2) be likely to protect the stock from closely approaching or reaching an overfished status, (3) provide a basis for objective measurement of the status of the stock against the definition, and (4) be operationally feasible. See 50 CFR § 600.310(c)(5).

In response to the national standards and advisory guidelines, the Council developed an objective and measurable definition of overfishing and, in 1991, implemented that definition under Amendments 16 and 21 to the FMPs (56 FR 2700, January 24, 1991). In the years since implementation of that definition, fishery scientists have had the opportunity to evaluate the efficacy of current definitions of ABC and OFL. In light of that experience and with increased understanding of the reference fishing mortality rates used to define ABCs and OFLs, fishery scientists have raised several concerns about the present definitions and the extent to which they reflect and account for levels of uncertainty about fish stock populations. Consequently, NMFS' Overfishing Definitions Review Panel (ODRP) and the Council's Scientific and Statistical Committee (SSC) recommended redefining ABC and overfishing to facilitate more conservative, risk-averse management measures when stock size and mortality rates are not fully known.

The ODRP and SSC recommended that a new definition of overfishing should: (1) Compensate for uncertainty in estimating fishing morality rates at a level of maximum sustainable yield (MSY) by establishing fishing mortality rates more conservatively as biological parameters become more imprecise; (2) relate fishing mortality rates directly to biomass for stocks below target abundance levels, so that fishing mortality rates fall to zero should a stock become critically depleted; and (3) maintain a buffer between ABC and the OFL. Accordingly, stock assessment scientists at the NMFS Alaska Fisheries Science Center have developed new proposed definitions consistent with these recommendations.

Revised Definitions of ABC and Overfishing

The proposed definitions involve sophisticated statistical analyses of fish population dynamics. The analyses develop a series of six levels or tiers of reliable information available to fishery scientists. OFLs would be determined according to the tier that best characterizes the available information.

The first tier, operating on the best available information, requires estimates of biomass and biomass at the level of MSY and a reliable description of the uncertainty (or probabilities) attending the variables involved in calculating fishing mortality at the level of MSY. Uncertainty is described by the distribution density of probable values: the more widely distributed the probable values, the more uncertainty exists in estimating which value most closely approximates the true value. Conversely, when probable values are clustered in a relatively small range, greater certainty exists that any one of these values represents a close approximation of the true value.

In tier (1), ABC and OFLs are set by deriving two different statistical means or averages from the probable values for fishing mortality at MSY. The OFL is set at the arithmetic mean (the same as a common ''average''), and the ABC is set at the harmonic mean, which results typically in a lower value than the common average. The harmonic mean grows increasingly lower in relation to the average as the probable values become more widely distributed. For example, the average for the series of values 3, 4, 5, 6, and 7 is 5; the harmonic mean for the same series of values is 4.57. The series of values 1, 2, 5, 8, and 9, for which the average is also 5, produces in contrast a harmonic mean of 2.58.

When applied to the range of probable values for fishing mortality at MSY, the harmonic mean would produce a value for ABC that becomes increasingly lower in relation to the OFL as the uncertainty in approximating the true value for fishing mortality increases. This process creates a buffer between ABC and OFL to protect the stock against uncertainty in management parameters and against overly aggressive harvest. Conversely, when the probable values for fishing mortality are clustered within a relatively small range, greater probability (i.e., less uncertainty) exists that the true value for fishing mortality will be approximated. In that case, the buffer between ABC and overfishing would decrease appropriately.

If the probabilities (i.e., the amount of uncertainty) cannot be reliably assessed for variables associated with fishing mortality at MSY, the remaining tiers provide, in descending order, for determination of ABC and OFLs with increasingly limited information. For tiers (1) and (2), the target abundance level is the size of the biomass necessary to produce MSY. Tier (3) provides for stocks for which reliable estimates of biomass at MSY are not available by setting the target abundance level at an estimate of the long-term average biomass that would be expected under average recruitment and a fishing mortality rate that would reduce the lifetime spawning stock to 40% of what it would be in the absence of fishing. Tiers (4) - (6) provide for stocks where target abundance levels cannot be known.

In tiers (2) - (5), ABC and OFL would be determined by reliable information on point estimates of biological factors: biomass (tiers (2) - (5)); fishing mortality rates at MSY (tier (2)); long-term average biomass under average recruitment (tier (3)); percentages of the level of spawning per recruit necessary to maintain the biomass in the absence of

any fishing (tiers (2) - (4)), or natural mortality (tier (5)). In each of tiers (2) - (5), ABC is set substantially lower than the OFL, in the case of moderately depleted stocks, by being correlated to biomass size. In the case of severely depleted stocks, tiers (1) - (4) set ABC and OFL at zero. When biological information is extremely limited, tier (5) establishes an ABC level at 25 percent below the natural mortality rate.

The sixth and final tier applies to stocks for which the only reliable information available is catch history. In such cases, the OFL would be set as the average catch from 1978 through 1995, unless an alternative value is established by the SSC on the basis of the best available scientific information, and ABC would be set lower than or equal to 75 percent of that OFL.

Under the current definitions, the OFL is set equal to the average catch between 1977 and the current year in the absence of reliable biological information. As long as catch never exceeds that OFL, this forces the OFL to decrease over time. The SSC expressed concern that OFL should instead remain constant over time when catch history is the only information available. By setting terminal years at 1978 and 1995, the proposed definition would create a constant OFL for applicable fisheries.

Catch history bears no relationship to biomass levels. However, in the absence of reliable biological information that would provide indicators about stock levels, catch history offers the only alternative, quantifiable information by which to manage a fishery. Tier (6) specifically provides for management of a fishery for which scientists have no other reliable and quantifiable information to indicate stock levels. In developing this final tier, the Council wanted to allow for the possibility that other information may become available that, while insufficient to establish OFL by a higher tier, would provide a more accurate assessment of stock levels. In this event, tier (6) allows for such information to supersede catch history in determining ABC and OFLs.

Under the proposed revision, the SSC has responsibility for determining the reliability of information by using either objective or subjective criteria. The formal review process for a proposed definition of overfishing requires, prior to NMFS approval, certification by the Director, Alaska Fisheries Science Center, NMFS (Science Director), that the proposed definition complies with guidelines provided at 50 CFR 600.310(c)(5). These guidelines provide that an overfishing definition must: (1) Have sufficient scientific merit, (2) is likely to protect the stock from closely approaching or reaching an overfished status, (3) provides a basis for objective measurement of the status of the stock against the definition, and (4) is operationally feasible. The Science Director has certified that this proposed definition of overfishing complies with each factor of the guidelines, based on the following rationale.

Scientific Merit

The scientific merit of Amendments 44/44 can be established on the basis of both internal and external evidence. Internally, evidence is provided by the extremely thorough scientific analysis of the new definition contained in the EA and the economic analysis, both in the main text and in the appendices. In addition, these documents cite examples from the scientific literature which support the new definition. External evidence comes in the form of peer review from the scientific community. Because the existing definitions of ABC and the OFL have been in place for several years, there has been ample opportunity for scientific review thereof. For example, the existing definitions have been reviewed by the Council's BSAI and GOA Plan Teams, the Council's SSC, and NMFS' ODRP. Each of these bodies consists at least in part of scientific experts in the field of marine fish stock assessment. The ODRP in particular was constituted explicitly for the purpose of providing expert scientific review of overfishing definitions developed pursuant to the guidelines contained in 50 CFR § 600.305. The definitional changes contained in Amendment 44/44 are in direct response to requests made by the SSC and ODRP. These changes have been reviewed and are supported by the BSAI and GOA Plan Teams and the SSC. In addition, the material presented in Appendix B of the EA and related economic analysis has been presented in three different international scientific symposia, in the context of which it has been subject to the review of a large number of the world's foremost scientific authorities in this area of research.

Effective Action

One of the important innovations of the new definition is that it institutes a mandatory buffer between ABC and OFL in all cases (under the existing definition, ABC and OFL can be the same, meaning that there is nothing to prevent the stock from being fished right up to the OFL). The new definition follows the ODRP's suggestion that management targets (ABC in this case) be distinguished clearly from management thresholds (OFL). Even if catches caused ABC to be exceeded by a small amount, overfishing would not likely result.

Objective Measurement

The new definition is integrated into the management system in an explicit, objective, and measurable way. Each year, stock assessments are conducted on every species or assemblage managed under the BSAI and GOA groundfish FMPs. Each of these assessments produces quantitative values for the catches corresponding to ABC and OFL. Following review and possible modification by the Plan Teams and SSC, these are approved by the Council, which then adjusts ABC (downward) as appropriate in order to arrive at the total allowable catch. Rigorous in-season monitoring of the fishery produces a real-time estimate of the commercial catch, which is continually compared against the harvest specifications to determine whether the fishery can remain open. Because the harvest specifications and the commercial catch are measured in the same units, the objective basis for comparison of the two is clear.

Operational Feasibility

As noted above, the new definition is tightly integrated into the existing management system, as is the existing definition. Insofar as the existing definition is operationally feasible, having successfully prevented overfishing of the groundfish resources since its implementation in 1990, and given that the new definition only improves on the existing one (e.g., through imposition of a buffer between ABC and OFL to reduce the level of danger implied by a harvest overrun), it is straightforward to predict that the new definition will be operationally feasible as well.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendments. No regulatory changes are necessary to implement these FMP amendments.

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

Dated: October 11, 1996.

Gary Matlock,

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

[FR Doc. 96–26633 Filed 10–11–96; 3:07 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 61, No. 202

Thursday, October 17, 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

Forest Service

Revised Land and Resource Management Plan for the Croatan National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to 36 CFR 219.10(g), the Regional Forester for the Southern Region gives notice of the Agency's intent to prepare an Environmental Impact Statement (EIS) for the revision of the Forest Land and Resource Management Plan (Forest Plan) for the Croatan National Forest. According to 36 CFR 219.10(g), Forest Plans are ordinarily revised on a 10–15 year cycle. Several amendments have been made to the Forest Plan since it was approved in 1986.

The Agency invites written comments within the scope of the analysis described below. In addition, the Agency gives notice that an open and full environmental analysis and decision-making process will occur on the proposals so that interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received by January 17, 1997. The Agency expects to file the Draft Environmental Impact Statement (DEIS) with the Environmental Protection Agency and make them available for public comment in March of 1997. The Agency expects to file the Final Environmental Impact Statement (FEIS) in November of 1997.

ADDRESS: Submit written comments to the Forest Supervisor at the following address: National Forests in North Carolina; P.O. Box 2750; Asheville, NC 28802.

FOR FURTHER INFORMATION CONTACT:

National Forests in North Carolina; Planning Staff Officer—George H. Cook—phone: (704) 257–4237.

RESPONSIBLE OFFICIAL: The Regional Forester for the Southern Region located at 1720 Peachtree Road, NW, Atlanta, Georgia 30367, is the Responsible Official.

Affected Counties

This Notice of Intent affects the following North Carolina Counties:

Croatan National Forest: Carteret, Craven, and Jones.

SUPPLEMENTARY INFORMATION:

1. The Purpose and Need for Action

Natural resource management decisions are made in two stages. First stage decisions allocate land and resources to various uses or conditions by establishing management prescriptions and where they apply in the plan area. These first stage decisions become the Forest Plan, which sets a framework for the next stage of decisions. Second stage decisions approve site-specific projects that implement the Forest Plan.

Forest Plans establish goals and objectives to achieve the desired resource conditions for National Forests. These Forest Plans also establish limits on actions (standards) that can be taken to meet desired conditions. Planners often use management areas to delineate where management prescriptions and their associated goals, objectives, and standards apply in the plan area.

Forest Plans guide site-specific actions. Projects are designed to change conditions from current to desired according to the management prescriptions in the Forest Plan. These site-specific actions must be consistent with Forest Plans.

Integrating multiple-resource conditions and uses is one important outcome of Forest Plans. The decisions made in Forest Plans are outlined in the planning regulations summarized below.

1. Establish forest-wide multiple-use goals and objectives (36 CFR 219.11(b)).

2. Establish forest-wide management requirements (36 CFR 219.13 to 219.27).

3. Establish multiple-use prescriptions and associated standards and guidelines for each management area (36 CFR 219.11(c)).

4. Determine land suitable for the production of timber (16 U.S.C. 1604(k) and 36 CFR 219.14).

5. Establish the allowable sale quantity for timber within a time frame specified in the Forest Plan (36 CFR 219.16).

6. Establish monitoring and evaluation requirements (36 CFR 219.11(d)).

7. Recommend roadless areas, which, if any, are proposed for potential wilderness designation (36 CFR 219.17).

The Croatan National Forest is completing its first planning cycle, which occurs at 10 to 15 year intervals. The current Forest Plan includes management direction for the Croatan and the Uwharrie National Forests. We propose to establish 2 separate Forest Plans, one for each National Forest. This notice focuses on revising management direction for the Croatan National Forest. The notice for revising the Uwharrie National Forest Plan will be issued separately.

2. Preliminary Issues

The revised Forest Plan will focus on key issues that have surfaced from reviews of the current Forest Plan. The 5-year review, as specified in the planning regulations, was conducted in 1992. A review of the ''analysis of the management situation'' was conducted in 1996. Results of these reviews identifies conditions that have changed over time. These changes have created new issues on the Croatan National Forest.

Managers of the Croatan National Forest are faced with issues both National and local in scope. The preliminary issues are framed as the following topics and needs.

A. *Biological Diversity.* Biological diversity refers to the variety of life, its forms, and the levels of organization. To manage for biodiversity, means to maintain the stability and resilience of ecosystems to respond and recover from natural and human induced disturbances.

1. On the Croatan National Forest, recovery of the red-cockaded woodpecker (RCW) depends on restoring the longleaf pine community through natural fire regimes. Longleaf pine communities are less susceptible to a variety of pests and pathogens and catastrophic wildfire. We need to designate the RCW Habitat Management Areas, set population objectives, and

locate and set management direction for RCW clusters and habitat linkages.

2. Species diversity is enhanced by restoring natural community composition, structure, and function, including wetlands. We need to identify which natural communities should be targeted for restoration and to what level should the restoration efforts be.

3. Black bear and its habitat are important components of the ecosystem. We need to estimate the quantity and distribution of habitat needed to maintain a stable population. Bear require hard mast foods, habitat linkages and freedom from motorized disturbance.

4. Neotropical migratory birds require a minimum block or patch size. At issue is which species are present, what patches currently exist, and how many should there be distributed across the forest.

B. *Recreation Opportunities.* People are seeking nature-based recreation opportunities, but demands for settings and activities range from primitive to highly developed. Also, the desires of traditional local users often differ from new recreationists drawn from a growing local tourist industry and newcomers to the local community. The amount and patterns of use for different activities are changing. The current mix of recreation opportunities no longer responds to changing public demands and expectations. The effects of recreation use on ecological and cultural resources is also a concern.

We need to determine what mix of resource-compatible recreation settings, activities, and facilities should be provided on the Croatan National Forest, and what level of use is sustainable.

C. *Special Land Allocations.* Wilderness, Wild and Scenic Rivers, and Research Natural Areas are allocations of lands to specific uses; some require Congressional designation. These specially allocated lands may not allow or may have reduced levels of timber and wildlife management, and may have limited recreational access. The concern is while many people may want to see more of these areas, others may oppose allocating land to these uses and may even desire a reduction in the quantities currently established. The following special land allocations will be addressed in the Forest Plan revision.

1. We will assess the wilderness resource and determine whether or not to recommend additional areas for Congressional designation. In addition, natural fire and prescribed fire will be evaluated as a way to restore natural processes to the wilderness.

2. White Oak River and Brices Creek will be assessed to determine their suitability as Wild and Scenic Rivers. The issue is whether or not to recommend these rivers for Wild and Scenic designation by Congress.

D. *Vegetation and Timber Management.* Concerns about ecosystem health, biological diversity, and rare species and communities drive a change in existing forest types and extent. The re-establishment of longleaf pine for RCW recovery may require different regeneration methods compared to current practices. Sustaining healthy timber stands provided RCW habitat and raw materials for local economies.

1. We will determine what lands on the Croatan will be suitable for timber production based on criteria in 36 CFR 219.14.

2. Current vegetation cover types would change as a result the RCW recovery. Longleaf pine would be emphasized on appropriate land types, resulting in increased acres of longleaf on the Croatan National Forest. The issue is how extensive should the longleaf restoration be, what is the rate of restoration efforts, and what regeneration methods should be used.

E. *Fire Management.* Fire is the primary disturbance factor on the Croatan National Forest; it has a vital role in the management of the ecosystem. Prescribed fire limits hazardous fuel buildup and maintains communities that depend on fire. Prescribed fire can be scheduled to meet land management objectives, including the reduction of wildfire risk to urban interface areas.

1. We need to determine the areas of wildland urban interface concerns and what role prescribed fire on National Forest lands has in reducing wildfire risks to these areas of concern.

2. In the restoration of natural communities on the Croatan, fire has the most far-reaching effect. We need to determine the amount and timing of prescribed fire needed to accomplish vegetation management goals.

3. Determinations need to be made as to whether or not natural (lightning) fire should be allowed to burn, particularly in wilderness, and, if so, under what conditions.

F. *Access.* Public access to enter, use, or pass through the Croatan National Forest has become increasingly controversial due to a growing local population, changes in adjacent land use, and concerns about the impacts to forest resources. These concerns include illegal trash dumping, illegal and legal shooting from roads, protection for wildlife that require freedom from motorized disturbance, protection of fragile natural communities, opportunities for non-motorized recreation use, and resource damage from legal and illegal off-highway vehicle use. The issue here is to what extent should motorized access be available on the National Forest.

G. *Local Communities.* As local communities grow, the pressure increases to accommodate a variety of special uses on the Forest. These special uses should blend with the multiple uses of the National Forest. We need to determine what kinds and extents of special uses to allow for supporting local municipal growth within the context of multiple uses of the National Forest.

3. Proposed Actions and Preliminary Alternatives

In this section, we disclose some preliminary proposals to address the issues. These proposals were developed from an analysis of the current conditions.

A. *Biological Diversity.* Restoration of RCW populations and their habitat will be emphasized. Ecologically unique aquatic ecosystems such as large pocosin lakes which support acid tolerant fish and other aquatic species, and swamp drainage streams and estuaries which are important habitats for anadramous and catadramous fish species will be protected.

1. Regional direction for recovery of the RCW is documented in the Environmental Impact Statement for the Recovery of the Red Cockaded Woodpecker (1995). Specific standards are disclosed for cluster, recruitment, and replacement stands, as well as foraging habitat. A tentative population objective is given in the EIS, but final population objectives must be established through the Forest Plan. Currently there are 60 active and 24 inactive clusters. We estimate the maximum population could be 190 clusters. This would require the designation of a habitat management area of 63,700 acres. Reasonable alternatives for population objectives could range from about 130 to 190 clusters. Consultation with the U.S. Fish and Wildlife Service will begin immediately to help set RCW population objectives.

2. Linked with RCW populations is the restoration of longleaf pine communities. These communities occupy less than 4 percent of its original presettlement range. Currently, the Forest contains about 12,000 acres of longleaf pine forests with the potential to restore up to 33,000 acres. This would require converting about 11,000 acres of loblolly and 10,000 acres of

pond pine to the longleaf community type.

Other rare communities include canebrakes, marshes, and wetlands. Preliminary estimates for restoration are 660 acres of marsh and 34,000 acres for canebrakes. The Natural Heritage Program, through the State of North Carolina, provides information about rare communities. They have proposed adding 18 additional special interest areas for the protection of rare communities. Criteria will be developed to evaluate these areas. The ecological classification system is used to evaluate restoration efforts. The landscape is mapped by ecological unit which identifies the potential vegetative community type that could be sustained at given sites. By comparing the current community type with its potential, the amount of restoration is identified.

3. Black bear habitat will be derived mapping patches of suitable habitat across the landscape. Open road density and available hard mast are among the criteria to evaluate these patches. The North Carolina Wildlife Commission will assist with the development of any additional criteria. The Commission has also provided information about habitats they may be suitable for bear, wild turkey, small game, waterfowl and sensitive habitats.

4. Similar to black bear, suitable habitat for neotropical migratory birds will be mapped as patches across the landscape. Criteria are being developed to conduct this mapping effort. A literature search is underway to determine the extent of past and current populations of these birds on the Croatan National Forest.

5. A classification of aquatic ecosystem types across the Croatan National Forest is currently underway, and will be completed in 1997. The delineation of different aquatic ecological types, together with data on the distribution and relative abundance of different species of fish and other biota, will form the basis for identification of regionally unique aquatic biological assemblages and their habitat requirements. Maintenance of those aquatic biological communities will be emphasized.

B. *Recreation Opportunities.* The Forest Service Recreation Opportunity Spectrum (ROS) is the analytic approach to evaluating recreation opportunities. It groups and describes compatible recreational, environmental and social settings, activities and experiences, and is the basis for identifying the capability of the Forest to provide these opportunities in concert with other resource needs and objectives. Currently, a high proportion of the Croatan is a roaded-natural setting that supplies motorized recreation opportunities. About 20 percent of the landbase meets semi-primitive non-motorized conditions. The Forest now provides a full range of nature-based recreation activities. Most activities take place on or near water bodies. Sites and facilities that feature water are often full or near capacity at peak times, suggesting the need for more of these opportunities. Primary land-based activities now occurring include hunting and off-highway vehicle riding. Demand for opportunities for horse and mountain bike riding and nature viewing is growing. Alternative setting distributions will be evaluated using Recreation Opportunity Spectrum (ROS). The appropriate mix of recreation activities, facilities, and level of use will be determined by these setting alternatives.

Although high quality stream fishing opportunities are available on the Croatan National Forest, access is often limited and could be improved by the construction of canoe and small boat access areas. Additional bank fishing opportunities for local anglers could be provided by planning trails that would access portions of exceptional stream fisheries and by the construction of small lakes and ponds in areas where water quality would facilitate intensive management for high yields of sport fish.

C. *Special Land Allocations.* Amendment #2 of the current Forest Plan determined White Oak River to be eligible for designation as a National Wild and Scenic River with potential for recreation and scenic classifications. Further study will determine if the river is suitable for designation. Brices Creek will also be studied to determine its eligibility for inclusion in the National Wild and Scenic River system. If eligible, further analysis will determine its suitability for designation. Whether or not either of these rivers are recommended for Wild and Scenic River designation will depend on the suitability analysis. The rivers will be evaluated in a manner consistent with the USDI and USDA jointly issued *Final Revised Guidelines for Eligibility, Classification, and Management of River Areas* Federal Register 34457, September 7, 1982).

The first step in the evaluation of potential wilderness is to inventory all roadless areas of the forest that satisfy the definition of wilderness found in Section 2(c) of the 1964 Wilderness Act (FSH 1909.12, chapter 7, item 7.1). Roadless areas are places that have regained or are regaining a natural, untrammeled appearance, where any signs of prior human activity are disappearing or being muted by natural forces. Criteria provides for roadless areas to include no more than one-half mile of improved road for each 1,000 acres.

The Croatan National Forest contains 20,800 acres in 7 roadless areas. Six of these areas adjoin the 4 existing congressionally designated wildernesses on the forest. Whether or not to recommend wilderness on the forest. Whether or not to recommend wilderness designation for each of the roadless areas will depend on a suitability analysis. Each wilderness area could be expanded as follows: Catfish Lake South Wilderness—405 acres; Sheep Ridge Wilderness—5,806 acres; Pond Pine Wilderness—3,010 acres; Pocosin Wilderness—286 acres. The remaining 11,293 acres are in a single roadless area. Criteria for the suitability analysis is from FSH 1909.12, Chapter 7.

D. *Vegetation and Timber Management.* If high population levels are set for the recovery of RCW, the restoration of longleaf pine communities would likely be accelerated which could increase timber harvesting and outputs. About 1 million board feet are currently harvested from the Croatan National Forest.

1. Approximately 90,000 acres are not suited for timber production using criteria for Stage 1 in 36 CFR 219.14. That leaves about 50,000 acres as tentatively suited for timber production. The current Forest Plan has about 27,000 acres suitable for timber production. In alternatives, the range of land suitable for timber production could vary from below the current 27,000 up to about to 50,000 acres.

2. If the RCW habitat management area includes most lands tentatively suited for timber production, then standards for regeneration methods are set by the RCW–EIS. Most regeneration will occur using unevenaged or 2-aged methods. Even-aged, specifically clearcutting, would only be used to convert loblolly or pond pine to longleaf stands. Regeneration methods outside the RCW habitat management area would key on the desired conditions for the management area.

E. *Fire Management.* Almost all of the 160,000 acre Croatan National Forest is suitable for fuel reduction burning. The only lands not suitable for fuel reduction are drainages and bottomland hardwoods, which are often used as fuel breaks.

1. Many developed areas around the Croatan are vulnerable to damage by wildfire. Actions are necessary to reduce these fuel loads and thus lessen

the risk of catastrophic losses from wildfire. Fuel loadings have increased due in part to the exclusion of both wildfire and prescribed fire as values at risk have increased with land development. Fuel loadings and arrangements on the Croatan have also been and will continue to be, significantly influenced by hurricane activity along the coast. The effects from these storms tend to be cumulative, and it is highly probable that the prescribed fire program will have to increase to address these additional fuels.

2. Three year burning rotations are preferred to maintain open, park-like forest conditions, particularly in longleaf pine/RCW habitat. This equates to approximately 50,000 acres per year. The current prescribed fire program has a target of about 20,000 acres per year.

3. Prescribed natural fire, (i.e., fire resulting from a natural ignition such as lightning that is subsequently designated and managed as a prescribed fire under specific weather and fuel parameters), may be considered to achieve well-defined management objectives. In order to consider the use of prescribed natural fire on the Croatan National Forest, the items listed in Forest Service Manual 5142.21 will need to be addressed in the Forest Plan. Wildfire may be allowed to burn if conditions are suitable. Criteria for these conditions will be developed. We will also consider prescribed natural (lightning) fires in wilderness areas in order to restore the natural processes in these areas.

F. *Access.* To address this issue, our approach will be to map open roads on the Croatan National Forest and identify areas where illegal dumping, shooting, or other resource damage or user conflicts occur resulting from motorized use. There are about 200 miles of Forest Service roads and many miles of state roads; nearly all are open for motorized access. In addition, many off-highway vehicle routes have been created which have not yet been inventoried. Alternatives will range from maintaining high levels of access to reduced levels of motorized access.

G. *Local Communities.* The human population is expected to grow by 12 percent in Craven, Carteret, and Jones counties. Municipalities are demanding space to use for facilitating development. One strategy is to identify lands for exchange with local governments. Other criteria will be developed based on the desired conditions of management areas in planning alternatives.

4. The Role of Scoping in Revising the Croatan National Forest Land and Resource Management Plans

Scoping for public comments about preliminary issues and proposed actions begins with the publication of this NOI. Public comments will be used to refine the issues, the proposed actions, and to develop a range of alternatives.

The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be utilized in the preparation of the DEIS. Public participation will be solicited by notifying in person and/or by mail, known interested and affected publics. News releases will be used to give the public general notice.

Public participation will be sought throughout the Forest Plan revision process and will be especially important at several points along the way. The first opportunity to comment will be during this scoping process (40 CFR 1501.7). Scoping includes: (1) identifying additional potential issues (other than those previously described), (2) from these, identifying significant issues or those which have been covered by prior environmental review, (3) exploring additional alternatives, and (4) identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

As part of the first step in scoping, a series of public meetings are scheduled to explain the public role in the planning process and provide an opportunity for public input. Formats, times, and places will vary. Specific information about these meetings will be released at a later date.

5. Release and Review of the EIS

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by March 1997. At that time, the EPA will publish a notice of availability of the DEIS in the Federal Register. The comment period on each DEIS will be 3 months from the date the EPA publishes the notice of availability in the Federal Register.

The Forest Services believes, 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 the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an Agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon v. Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris,* 490 F.Supp.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 3 month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful when comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period on the DEIS ends, comments will be analyzed, considered, and responded to by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed in November 1997. The Responsible Official will consider the comments, responses, environmental consequences discussed in each FEIS, and applicable laws, regulations, and policies in making a decision regarding these revisions. The Responsible Official will document the decision and reasons for the decision in a Record of Decision for the Forest Plan. The decision will be subject to appeal in accordance with 36 CFR 217.

The Responsible Official for the Forest Plan is the Regional Forester, Southern Region, 1720 Peachtree Road, NW, Atlanta, Georgia 30367.

Dated: October 10, 1996.

Robert D. Bowers,

Acting Regional Forester.

[FR Doc. 96–26624 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: It is the intention of NRCS to issue a series of new conservation practice standards in its National Handbook of Conservation Practices. These new standards include Forage Harvest Management (Code 511); Mine Shaft and Adit Closing (Code 457); and Vegetative Barriers (Code 601). NRCS State Conservationist's who choose to adopt these practices for use within their state will incorporate them into Section IV of their Field Office Technical Guide (FOTG). Some of these practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received until not later than November 18, 1996.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Gary Nordstrom, Director, Ecological Sciences Division (ECS), Natural Resources Conservation Service (NRCS), Post Office Box 2890, Room 6154–S, Washington, DC 20013.

Copies of these standards are available from NRCS–ECS in Washington, DC. Copies are also available electronically on the NRCS server at Fort Worth, Texas. The name of the server is ''ftp.ftw.nrcs.usda.gov.'' Practice standards appear as files in ''/pub/nhcp/pending.'' Practice code numbers are used as file names in this subdirectory. These standards are available as MS Word 6.0 files. They should be downloaded from the FTP server as binary files.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Gary R. Nordstrom,

Director, Ecological Sciences Division, Natural Resources Conservation Service, Washington, DC.

[FR Doc. 96–26591 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Office of the Secretary Senior Executive Service (SES) Performance Appraisal System:

William J. Taylor, III
Michael A. Levitt
Carolyn P. Acree
Mark E. Brown
Ronald P. Hack
Frank W. Deliberti
Eileen M. Albanese
Paul R. Webber, IV
Shirl G. Kinney

Anthony J. Calza,

Acting Executive Secretary, Office of the Secretary, Performance Review Board.

[FR Doc. 96–26566 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–BS–M

Foreign-Trade Zones Board

[Order No. 845]

Grant of Authority for Subzone Status United Technologies Corporation, Pratt & Whitney Group Precision Components International, Inc. (Aircraft Turbine Engine Components) Columbus, GA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, for authority to establish special-purpose subzone status at the aircraft turbine engine component manufacturing facilities of United Technologies Corporation, Pratt & Whitney Group and Precision Components International, Inc. (an affiliate of Pratt & Whitney), located within a manufacturing complex in Columbus, Georgia, was filed by the Board on November 1, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 68–95, 60 FR 56566, 11–9–95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of subzones at the United Technologies Corporation, Pratt & Whitney Group plant (Subzone 26E) and at the adjacent Precision Components International, Inc., plant (Subzone 26F) in Columbus, Georgia, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 7th day of October 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–26649 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 847]

Exxon Corporation (Oil Refinery), Baton Rouge, LA, Area; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade

Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Baton Rouge Port Commission, grantee of Foreign-Trade Zone 154, for authority to establish special-purpose subzone status at the oil refinery/petrochemical complex of Exxon Corporation in the Baton Rouge, Louisiana, area, was filed by the Board on February 7, 1996, and notice inviting public comment was given in the Federal Register (FTZ Docket 9–96, 61 FR 6623, 2/21/96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 154A) at the oil refinery/petrochemical complex of Exxon Corporation in the Baton Rouge, Louisiana, area, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #2710.00.2500 and #2710.00.4510 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix D);

—Products for export; and,

—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 7th day of October 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–26650 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 72–96]

Proposed Foreign-Trade Zone—Springfield, Missouri; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Springfield Airport Board, on behalf of the City of Springfield, Missouri, to establish a general-purpose foreign-trade zone in Springfield, Missouri, within the Springfield Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 4, 1996. The applicant is authorized to make the proposal under Section 351.388 of the Revised Statutes of Missouri.

The proposed zone would encompass the Springfield-Branson Regional Airport complex (2,363 acres) located some 5 miles northwest of downtown Springfield. The complex includes an industrial park (Air Centre) and fuel storage facilities. The Airport Board owns the airport and it plans to serve as operator of the zone.

The application contains evidence of the need for zone services in the Springfield area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as electronic components, exercise equipment, medical equipment, food processing/manufacturing, and automobile parts and supplies. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on November 12, 1996, at 2:00 p.m., Springfield Area Chamber of Commerce, 202 John Q. Hammons Parkway, Springfield, Missouri 65806.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 16, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 2, 1997.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 5141 West Cargo, Suite C, Springfield, MO 65803

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: October 10, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–26645 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 848]

Clark Refining and Marketing, Inc. (Oil Refinery), Jefferson County, TX; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Foreign Trade Zone of Southeast Texas, Inc., grantee of Foreign-Trade Zone 116, for authority to establish special-purpose subzone status at the oil refinery complex of Clark Refining and Marketing, Inc., in Jefferson County, Texas, was filed by the Board on February 16, 1996, and notice inviting public comment was given in the

Federal Register (FTZ Docket 12–96, 61 FR 7469, 2/28/96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 116C) at the oil refinery complex of Clark Refining and Marketing, Inc., in Jefferson County, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #210.00.2500 and #2710.00.4510 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix D);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 7th day of October 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–26651 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a)(1994), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates.

Initiation of Reviews

In accordance with sections 19 C.F.R. 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a) (19 CFR 353.22(a). We intend to issue the final results of these reviews not later than September 30, 1997.

Antidumping duty proceedings	Period to be reviewed
Mexico: Gray Portland Cement and Clinker A–201–802; Cemex, S.A. de C.V.*	8/1/95–7/31/96
The United Kingdom: Crankshafts A–412–602; British Steel Forgings	9/1/95–8/31/96

* Inadvertently omitted from previous initiation notice.

Countervailing Duty Proceedings

None.

If requested within 30 days of the date of publication of this notice, the Department will determine, where appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: October 8, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–26648 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China; Initiation of Antidumping Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigation of freshwater crawfish tail meat from the People's Republic of China.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor at (202) 482–0666, Elisabeth Urfer at (202) 482–4052, or Maureen Flannery at (202) 482–4733, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

INITIATION OF INVESTIGATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act)

by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the current regulations as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

The Petition

On September 20, 1996, the Department received a petition filed in proper form by the Crawfish Processors Alliance (petitioner). Petitioner amended the petition on October 7, 1996, in response to the Department's request for additional information. On October 8, 1996, petitioner submitted a clarification regarding the scope of the petition. On October 10, 1996 petitioner amended the public summary of the petition.

In accordance with section 732(b) of the Act, petitioner alleges that imports of freshwater crawfish tail meat from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry within the United States.

Because the petitioner is an interested party as defined under section 771(9)(C) of the Act, it has standing to file a petition for the imposition of antidumping duties.

Determination of Industry Support for the Petition

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

A review of the production data provided in the petition and other information readily available to the Department indicates that petitioner accounts for more than 50 percent of the total production of the domestic like product. The Department received no expressions of opposition to the petition from any domestic producer or workers' organization. Accordingly, the Department determines that the petition has been filed by or on behalf of the domestic industry.

Scope of the Investigation

The product covered by this investigation is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the investigation are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 0306.19.00.10 and 0306.29.00.00. The HTS subheadings are provided for convenience and customs purposes. Although the HTS numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Export Price

The petitioner based export price on actual FOB and CIF price quotations from exporters of Chinese crawfish. Petitioner made deductions to the export price for foreign inland freight, using the average distance between cities where crawfish are processed in the PRC and the port from which the majority of Chinese crawfish are exported. We made no other adjustments to export price.

Normal Value

In previous investigations, the Department has determined that the PRC is a non-market economy (NME) country within the meaning of section 771(18) of the Act. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* (61 FR 19026 (April 30, 1996)). In accordance with section 771(18)(C), the presumption of NME status for the PRC has not been revoked by the Department and therefore remains in effect for purposes of the initiation of this investigation. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the NME status of the PRC as well as the assignment of separate rates to individual exporters and other issues related to the PRC's status as an NME country. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC* (59 FR 22585 (May 2, 1994).)

In antidumping investigations in which the comparison market is not a market economy, section 773(c)(1) of the Act requires that the normal value (NV) of the foreign like product be based on the producers' factors of production valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economies that are significant producers of comparable merchandise and at a level of economic development comparable to that of the NME country.

Petitioner lacked actual information relating to the factors of production for material inputs in the PRC. Therefore, petitioner used U.S. production factors for materials and labor as an approximation of Chinese factors. Petitioner submitted an affidavit from a U.S. crawfish producer, who stated that crawfish tail meat must be peeled by hand, that peeling crawfish is a skill that can be learned, and that, therefore, Chinese peelers should be able to peel crawfish at the same rate as peelers in the United States. According to the U.S. producer, Chinese facilities are very similar to the facilities and equipment used in the United States, although, in some cases, they may be better. Petitioner used in its calculations of NV the calculations made by the U.S. producer with regard to the average yield, *i.e.*, the number of pounds of live crawfish needed to produce one pound of crawfish tail meat; the time it takes an average crawfish peeler in the United States to produce one pound of peeled product; and the time it takes to pack crawfish tail meat in the United States.

With respect to the selection of a surrogate country in which to value the factors, petitioner cites to the *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products from the People's Republic of China* (61 FR 43337 (August 22, 1996)), and notes that, in that case, the Department identified India, Nigeria, Pakistan, Sri Lanka, Egypt, and Indonesia as potential surrogate countries for China based upon level of economic development. However, neither India nor any of these other countries is a significant producer or processor of crawfish tail meat.

However, according to petitioner, India is an appropriate surrogate country for valuing most of the relevant factors of production because (1) India has a significant seafood processing industry, and (2) the seafood processing

industry in India and elsewhere is comparable to the crawfish processing industry in China in that seafood processors throughout the world are likely to have similar factory overhead and selling, general and administrative expenses (SG&A). Petitioner valued labor using Indian labor rates compiled by the International Labour Organization in its 1993 *Yearbook of Labour Statistics*. Petitioner based the factory overhead, SG&A expenses, and profit elements of its NV calculation on data from financial statements of five publicly held seafood processors in India for the fiscal year 1995.

Petitioner argued that prices for crawfish, the primary material input in the processing of crawfish tail meat, are not comparable to the prices for other kinds of seafood, and therefore, the Department should not value crawfish using Indian seafood prices. Petitioner chose Spain as the surrogate country for purposes of valuing crawfish, because Spain is a significant producer and processor of crawfish, is a market economy country, and, in relation to other crawfish producing and processing countries, has the level of economic development most comparable to that of the PRC. Petitioner used publicly available published information from official Spanish import data to value this input.

Since Chinese exporters sell crawfish tail meat to the United States at packed prices, petitioner added U.S. packing costs to NV.

Based on comparisons of export price to NV, the estimated dumping margins range from 274 to 427 percent. If it becomes necessary at a later date to consider the petition as a source of facts available under section 776 of the Act, we may further review the calculations.

Fair Value Comparisons

Based on the data provided by petitioner, there is reason to believe that imports of freshwater crawfish tail meat from the PRC are being, or are likely to be, sold at less than fair value.

Initiation of Investigation

We have examined the petition on freshwater crawfish tail meat from the PRC and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to a domestic industry of a like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating an antidumping duty investigation to determine whether imports of freshwater crawfish tail meat from the PRC are being, or are likely to be, sold at less than fair value. Unless extended, we will make our preliminary determination by February 27, 1997.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by November 4, 1996, whether there is a reasonable indication that imports of freshwater crawfish tail meat from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–26644 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–098. *Applicant:* University of Arizona Foundation, 1111 N. Cherry Avenue, Tucson, AZ 85721. *Instrument:* Noble Gas Mass Spectrometer, Model 215–50. *Manufacturer:* Mass Analyser Products Ltd., United Kingdom. *Intended Use:* The instrument will be used to determine noble gas abundances and isotopic compositions of helium, neon, argon, krypton and xenon extracted from terrestrial and extraterrestrial samples. The objectives of the research are to understand the early history of the solar system by analyzing the noble gas isotopic composition of meteorites and lunar samples to understand the temporal and thermal evolution of the Earth and planetary materials and to identify mantle and crustal materials using the noble gas isotopic method which requires helium abundance and isotopic composition. The instrument will also be used for the training of graduate students. *Application accepted by Commissioner of Customs:* September 18, 1996.

Docket Number: 96–099. *Applicant:* University of South Carolina, 730 S. Main Street, Columbia, SC 29208. *Instrument:* Stopped-Flow Spectrophotometer, Model SX.18MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used to analyze the transient state kinetics of ligand binding to enzymes that are involved in the metabolism of chemotherapeutic agents. Recombinant enzymes will be rapidly mixed with ligands and the fluorescence or absorbance changes accompanying ligand binding will be monitored. The changes in spectrophotometric properties will be used to calculate rate constants governing specific reactions catalyzed by the enzyme of interest. *Application accepted by Commissioner of Customs:* September 18, 1996.

Docket Number: 96–100. *Applicant:* Johns Hopkins University, 3400 N. Charles Street, Baltimore, MD 21218. *Instrument:* Fast Correlation Spectrometer, Model ALV 5000/E. *Manufacturer:* ALV Laser, Germany. *Intended Use:* The instrument will be used to investigate the dynamic motion of the polymers in solution during an experiment called diffusing wave spectroscopy. The objective of the investigation is to understand the relaxation of a network of polymer molecules which form a transiently elastic network. *Application accepted by Commissioner of Customs:* September 18, 1996.

Docket Number: 96–101. *Applicant:* University of Massachusetts Medical Center, 55 Lake Avenue North, Worcester, MA 01605. *Instrument:* Spectrophotometer System, Model SF–61 DX2/X. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for studies of the glucose transport protein

of human erythrocytes and its interaction with sugars and inhibitory molecules. *Application accepted by Commissioner of Customs:* September 18, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–26647 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 960909249–6249–01]

RIN 0693–xx23

National Voluntary Conformity Assessment System Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; request for public comment.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) received a letter dated July 24, 1996 from The American Society of Mechanical Engineers (ASME) requesting the development of a new program under the National Voluntary Conformity Assessment System Evaluation (NVCASE) Program to evaluate and recognize that organization as an accreditor of product certification bodies. The goal is to have pressure equipment tested and certified in the United States and have the results accepted in European Union (EU) member states on an equal basis as if performed in those countries under Council Directive 87/404/EEC with 90/488/EEC amendment.

DATES: Comments on this request must be received by January 2, 1997.

ADDRESSES: Comments should be submitted in writing to Robert L. Gladhill, NVCASE Program Manager, NIST, Bldg. 820, Room 282, Gaithersburg, MD 20899, by fax at 301–963–2871, or E-mail robert.gladhill@nist.gov.

FOR FURTHER INFORMATION CONTACT: Robert L. Gladhill, NVCASE Program Manager, at NIST, Bldg. 820, Room 282, Gaithersburg, MD 20899, by telephone at 301–975–4273 by fax at 301–963–2871 or by E-mail at robert.gladhill@nist.gov.

SUPPLEMENTARY INFORMATION: The NVCASE procedures at 15 CFR Part 286 require NIST to seek public consultation when it receives such requests. This program involves a collection of information subject to the Paperwork Reduction Act. This collection is approved by the Office of Management and Budget under Control No. 0693–0019.

The Text of the Request follows:

July 24, 1996.

Mr. Robert L. Gladhill,
Program Manager, NVCASE Program,
NIST,
Bldg. 820, Room 282,
Gaithersburg, MD 20899.

Dear Mr. Gladhill: The American Society of Mechanical Engineers (ASME) is seeking recognition under NVCASE for our conformity assessment program for pressure equipment.

Since 1916, ASME has conducted conformity assessment programs for pressure equipment constructed in accordance with the ASME Boiler and Pressure Vessel Code. The Code provides rules for materials, design, fabrication, inspection, testing, quality control, certification, and marking of pressure equipment. Accredited manufacturers are authorized to use one or more of ASME's proprietary marks. Twenty-two marks are registered in the US and about the world.

In accordance with a 1972 Consent Decree with the United States government, ASME administers its accreditation programs uniformly about the world. There are more than 4000 accredited manufacturers in 55 countries. The ASME mark is required by law in most US States and all Canadian Provinces, and is used in 80 countries.

The following is the information you indicated was necessary for evaluation of our request:

Foreign Requirements: The corresponding foreign requirements are the European Union's directives for pressure equipment, specifically:

- Council Directive on the harmonization of the laws of the Member States relating to simple pressure vessels (87/404/EEC with 90/488/EEC amendment).
- Council Directive on the approximation of the laws of the Member States concerning pressure equipment (second reading and adoption scheduled for June 1996) ASME is participating in discussions regarding a mutual recognition agreement.

Industrial Sector: The industrial sector includes manufacturers of pressure equipment, including boilers, pressure vessels, piping, pressure relief devices, and materials. Manufacturers of machinery that incorporate these vessels are also affected.

The ASME accreditation program is utilized by the following US federal agencies:

- Department of Defense
- Department of Energy
- Department of Transportation
  - —Coast Guard
  - —Research and Special Programs Administration
- General Services Administration
- National Aeronautics and Space Administration
- Nuclear Regulatory Commission
- Occupational Safety and Health Administration

Program Area: The program includes both product and quality system certification.

Level of Recognition: ASME seeks recognition of its conformity assessment programs.

Recommended Criteria, Technical Requirements: The basic criteria for the program are the ASME Boiler and Pressure Vessel Code and ISO 9001. The corresponding European Union requirements are their Simple Pressure Vessel Directive and the Pressure Equipment Directive noted above.

Rationale: Currently, simple pressure vessels entering the EU must be CE marked. By mid 1997, there will be a similar requirement for pressure equipment. Authorization to affix the CE mark requires acceptance by an organization (notified body) which an EU Member State has appointed to carry out the conformity assessment activities. A notified body may subcontract certain technical aspects to a US organization, however, it may not subcontract initial assessment nor acceptance/approval.

Recognition of ASME as a competent technical body in the area of pressure equipment and conformity assessment would allow for mutual recognition agreements that would be of benefit to ASME Certificate Holders and companies that incorporate vessels into machinery. There are currently 3000 accredited companies in the US and 1100 in other countries.

Please let us know if any additional information is required at this time. We would also be willing to meet with you to discuss the process.

Sincerely,

David A. Wizda,

Director, Conformity Assessment.

Interested parties should respond in writing to the above address. All comments submitted will become part of the public record and will be available for inspection and copying at the U.S. Department of Commerce Central Records and Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue, Washington, DC 20230.

Dated: October 10, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–26643 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 100896B]

Small Takes of Marine Mammals Incidental to Specified Activities; U.S. Coast Guard

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

ACTION: Notice of receipt of application for a small take exemption; request for information.

SUMMARY: Under the Marine Mammal Protection Act (MMPA), NMFS has received a request from the U.S. Coast Guard (USCG) for a small take of certain marine mammal species incidental to USCG vessel and aircraft operations off the U.S. Atlantic shoreline over the next 5 years.

DATES: Comments and information must be received no later than November 18, 1996.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–2337. A copy of the application and biological opinion may be obtained by writing to this address or by telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On June 2, 1995, NMFS received an application for a small take exemption under section 101(a)(5)(A) of the MMPA from the USCG in order to allow a small take of certain marine mammal species incidental to USCG vessel and aircraft operations off the U.S. Atlantic shoreline over the next 5 years. This application was in response to an order dated May 21, 1995 in *Strahan* v. *Linnon* wherein the presiding District Court judge ordered the USCG to apply by May 31, 1995, under section 101(a)(5)(A) of the MMPA, for a small take of northern right whales (*Eubalaena glacialis*). The application requested the following marine mammal species, in addition to the northern right whale: Blue whale (*Balaenoptera musculus*), fin whale (*B. physalus*), sei whale (*B. borealis*), humpback whale (*Megaptera novaeangliae*), sperm whale (*Physeter macrocephalus*).

Specific activities covered in the application are the operation of USCG vessel and aircraft activities in the North Atlantic, including responses to marine pollution events, port safety and security issues, law enforcement efforts, search and rescue missions, vessel traffic control, and maintenance of aids to navigation.

Before processing this application, NMFS determined that it would be necessary to first complete consultation under section 7 of the Endangered Species Act (ESA). The USCG submitted a final ESA Biological Assessment for the U.S. Atlantic Coast on August 3, 1995, and NMFS issued a Biological Opinion on September 15, 1995. As a result of an October 9, 1995, humpback whale strike in the Gulf of Maine, the USCG requested reinitiation of consultation on February 22, 1996. That process was concluded on July 22, 1996. During the time period for consultation, processing the USCG application for a small take authorization was suspended.

The finding of the July 22, 1996, section 7 consultation was that continued vessel and aircraft operations by the USCG are likely to jeopardize the continued existence of northern right whales. However, NMFS also provided the USCG with a reasonable and prudent alternative, which, if implemented fully and in a timely manner by the USCG, significantly reduces the USCG's potential to cause injury or mortality to a right whale and thereby avoids the likelihood of jeopardizing the continued existence of right whales. This reasonable and prudent alternative is described in the July 22, 1996 biological opinion which is available upon request (see **ADDRESSES**).

Finding

Under section 101(a)(5)(A) of the MMPA, authorization to harass, injure or kill marine mammals incidental to specified activities may be granted for periods up to 5 years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Negligible impact is the impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. In 1995, NMFS estimated that the potential biological removal (PBR) level for the Western North Atlantic right whale was 0.4 whales. PBR is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.

The average reported mortality and serious injury to northern right whales due to ship strikes was one whale per year during 1990–94 (Blaylock *et al.* 1995). The USCG reportedly was responsible for one strike in 1991 and another in 1993. Therefore, because NMFS has determined that the loss of even a single northern right whale is significant (i.e., greater than PBR), a negligible impact finding under section 101(a)(5)(A) cannot be made for ship strikes of northern right whales by the USCG. For that reason, the USCG's June 2, 1995, application for a small take authorization for northern right whales was denied by letter on July 31, 1996. The requested authorization for the additional marine mammal species incidental to USCG operations was not addressed at that time.

Strahan v. Linnon and Strahan v. Coxe

In these two cases, the presiding District Court judge expressed concern with NMFS' actions to date on the small take application and other marine mammal authorizations. Therefore, NMFS is announcing the receipt of the USCG application in order to crystallize the issues efficiently and formally in the public forum.

Issues

NMFS has identified the following issues that, in addition to the requirements of section 101(a)(5)(A) of the MMPA, must be addressed prior to publication of a proposed rule. These issues are:

(1) While an authorization for the serious injury or mortality of northern right whales cannot be issued for reasons stated above, should NMFS issue an authorization for the harassment or non-serious injury of northern right whales by USCG activities.

(2) Should NMFS publish a proposed rule to authorize the incidental take (including serious injury and mortality) of marine mammal species other than right whales, including marine mammal

species that are unlikely to be struck by USCG vessels (harassment takes).

(3) If NMFS is unable to make a negligible impact determination for one or more of the applicant's marine mammal species (see 50 CFR 216.103(c)), should NMFS consider an authorization for the harassment or non-serious injury of these species under section 101(a)(5)(D) of the MMPA by USCG activities.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations (if appropriate) to allow the taking (see **ADDRESSES**). NMFS will consider this information in developing an environmental assessment under the National Environmental Policy Act, and, if appropriate, propose regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given time and opportunity to comment.

Dated: October 10, 1996.

Patricia Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–26634 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

Kathryn C. Brown

Dennis R. Connors

William D. Gamble

Bernadette McGuire-Rivera

Richard D. Parlow

Neal B. Seitz

William F. Utlaut

Barbara S. Wellbery

Ronald P. Hack

Anthony J. Calza,

Acting Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 96–26565 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–BS–M

Patent and Trademark Office

Request for Comments on the Chairman's Text of the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, To Be Held in Geneva From December 2 to 20, 1996

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for public comments.

SUMMARY: As the Administration prepares for the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, to be held in Geneva from December 2 to 20, 1996, we invite interested parties to submit written comments on the Chairman's text and to attend a public briefing to discuss the Chairman's text of the Diplomatic Conference. During the briefing, Jukka Liedes, Chairman of the Committee of Experts, will discuss the text and will be available to answer questions.

DATES: The briefing will be held on November 12, 1996, from 1 p.m. to 5 p.m.

Written comments on the Chairman's text are due on or before November 22, 1996.

ADDRESSES: The briefing will be held in Marriott's Crystal Forum, a part of the Crystal City Marriott Hotel located in The Underground, 1999 Jefferson Davis Highway, Arlington, Virginia.

A transcript of the meeting will be made available for public inspection in room 902 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia. The transcript will also be made available through the Patent and Trademark Office's home page, which is located at www.uspto.gov.

Written comments should be submitted to the Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, D.C. 20231, marked to the attention of Ms. Carmen Guzman Lowrey, Associate Commissioner for Governmental and International Affairs. Written comments may also be submitted electronically by sending them to Mr. Keith Kupferschmid at diploconf@uspto.gov.

All written comments received will be made available for public inspection in room 902 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Keith M. Kupferschmid by telephone at (703) 305–9300, by facsimile at (703) 305–8885, by electronic mail at diploconf@uspto.gov or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, D.C. 20231. It is not necessary for interested parties to contact the PTO to request to attend the briefing.

SUPPLEMENTARY INFORMATION: The United States is committed to making progress in the World Intellectual Property Organization (WIPO) toward improving international protection for works protected by copyright and neighboring rights. We want to build upon the international intellectual property norms that were set in the Agreement on Trade-Related Aspects of Intellectual Property (TRIPs). This is essential, especially in view of the need to deal with the intellectual property issues associated with the Global Information Infrastructure (GII). To accomplish this goal, the members of WIPO, with the leadership of the United States, are working to establish three new international agreements, commonly referred to as—

- A Protocol to the Berne Convention for the Protection of Literary and Artistic Works, which would modernize the Berne Convention to take into account new forms of expression and new uses of copyrighted works that have evolved due to technological developments since the Berne Convention's most recent revision in 1971.
- A New Instrument for the Protection of Performers and Producers of Phonograms, which would improve international standards of protection for sound recordings, and protect the rights of certain performers in respect of their live performances.
- A Treaty for the Sui Generis Protection of Databases, which would ensure adequate incentives to invest in creating databases, through a new type of protection that would safeguard databases against destruction of their commercial value.

These agreements would provide the levels of protection for both copyright and neighboring rights that are critical to the development of the commercial potential of the GII.

Much progress has been made in the negotiations in WIPO through the submission of treaty proposals by the United States and other countries. Based on these submissions and the views expressed in meetings of the Committee of Experts, the Chairman of the Committee of Experts has prepared three draft treaties which address digital and conventional copyright issues. These proposed treaties will be taken up at a Diplomatic Conference on Certain Copyright and Neighboring Rights Issues to be convened December 2–20, in Geneva at WIPO headquarters.

As the Administration prepares for the Diplomatic Conference, we invite interested parties to submit written comments on the Chairman's text of the draft treaties. These comments should be received by the PTO no later than November 22, 1996.

In addition, to facilitate a better understanding of the text of the draft treaties, the PTO will hold a briefing to discuss them. During the briefing, Jukka Liedes, Chairman of the Committee of Experts, will discuss the text and will be available to answer questions.

Copies of the draft treaties and other information relevant to the Diplomatic Conference can be found at the PTO's home page, located at www.uspto.gov. Copies of the draft treaties will also be available at the briefing and upon request.

Dated: October 10, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–26511 Filed 10–16–96; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, October 23, 1996, 10:30 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

FY 1997 Operating Plan

The staff will brief the Commission on issues related to the Commission's Operating Plan for Fiscal Year 1997.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 15, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–26826 Filed 10–15–96; 2:46 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); FY97 DRG Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice provides the updated adjusted standardized amounts, DRG relative weights, outlier thresholds, and beneficiary cost-share per diem rates to be used for FY 1997 under the CHAMPUS DRG-based payment system. It also describes the changes made to the CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

EFFECTIVE DATES: The rates and weights and Medicare PPS changes which affect the CHAMPUS DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 1996.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, program Development Branch, OCHAMPUS, telephone (303) 361–1227. To obtain copies of this document, see the **ADDRESSES** section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), and October 22, 1990 (55 FR 42560).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by CHAMPUS, is that the CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the CHAMPUS system will follow the same rules that apply to the Medicare PPS. HCFA publishes these changes annually in the Federal Register and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the CHAMPUS DRG-Based Payment System

Following is a discussion of the changes the Health Care Financing Administration (HCFA) has made to the Medicare PPS which affect the CHAMPUS DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the CHAMPUS DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the CHAMPUS DRG-based payment system is the same as the current Medicare Grouper with two modifications. The CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and we have implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to MDC 15 occur before assignment of the PreMDC DRGs. This results in all neonate tracheostomies and organ transplants to be grouped to MDC 15 DRGs and not to DRGs 480–483 or 495. Grouping for all other DRGs under the CHAMPUS system is identical to the Medicare PPS.

For FY 1997, HCFA will implement a number of classification changes, including surgical hierarchy changes, revisions to the Major Problem Diagnosis List, and refinements to the Complications and Comorbidities (CC) List. The CHAMPUS Grouper will incorporate all changes made to the Medicare Grouper.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

CHAMPUS will continue to use the same wage index amounts used for the Medicare PPS. In addition, CHAMPUS will duplicate all changes with regard to the wage index for specific hospitals which are redesignated by the Medicare Geographic Classification Review Board.

C. Hospital Market Basket

We will update the adjusted standardized amounts according to the final update hospital market basket used for the Medicare PPS according to HCFA's August 30, 1996, final rule.

D. Outlier Payments

CHAMPUS is adopting the HCFA outlier thresholds for FY97. The long-stay threshold shall equal the lesser of 3.0 standard deviations or 24 days above the DRG's geometric LOS. Long-stay outliers will be reimbursed the DRG-based amount plus 33 percent of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier threshold. The cost outlier will be reimbursed the DRG-based amount plus 80 percent of the standardized costs exceeding the threshold. The cost outlier threshold shall be the DRG payment (wage-adjusted but prior to adjustment for indirect medical education) plus a flat rate of $8,850.

E. Capital-Related Costs

For FY97 HCFA will increase its inpatient capital-related prospective payment rate. Since CHAMPUS pays for capital-related costs on a retrospective basis based on actual costs instead of prospectively like Medicare, we will reimburse 100% of capital-related costs for CHAMPUS days occurring on or after the effective day of the Medicare PPS update.

II. Cost-to-Charge Ratio

For FY 1997, the cost-to-charge ratio used for the CHAMPUS DRG-based payment system will be 0.5795 which is increased to 0.5895 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.6459.

III. Updated Rates and Weights

Tables 1 and 2 provide the rates and weights to be used under the CHAMPUS DRG-based payment system during FY 1997 and which are a result of the changes described above. The implementing regulations for the CHAMPUS DRG-based payment system are in 32 CFR Part 199.

Dated: October 10, 1996.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

Table 1 - National Urban and Rural Adjusted Standardized Amounts, Labor/Non labor, and Cost Share Per Diem

The following summary provides the adjusted standardized amounts and the cost-share per diem for beneficiaries other than dependents of active-duty members.

The adjusted standardized amounts are effective for admissions occurring on or after October 1, 1996.

National Large Urban Adjusted
Standardized Amount.....$3,121.08
Labor portion.....$2,228.45
Non labor portion.....$892.63

National Other Areas
Standardized Amount.....$2,948.89
Labor portion.....$2,105.51
Non labor portion.....$843.38

The cost-share per diem is effective for inpatient days of care occurring on or after October 1, 1996.

Cost-share per diem for beneficiaries other than dependents of active duty members.....$360.00

Table 2 - CHAMPUS WEIGHTS AND THRESHOLD SUMMARY

EFFECTIVE FOR ADMISSIONS OCCURRING ON OR AFTER OCTOBER 1, 1996.

THE FOLLOWING SUMMARY SHOWS THE FINAL CHAMPUS DRG WEIGHTS AS WELL AS THE ARITHMETIC AND GEOMETRIC AVERAGE LENGTHS OF STAY AND OUTLIER THRESHOLDS FOR ALL CHAMPUS DRGS. LONG STAY THRESHOLD (A) IS APPLICABLE TO ALL HOSPITALS EXCEPT CHILDRENS HOSPITALS, AND LONG STAY THRESHOLD (B) IS APPLICABLE TO CHILDRENS HOSPITALS.

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.7743	8.7	6.2	1	30	23
2	CRANIOTOMY FOR TRAUMA AGE >17	3.6925	9.0	5.7	1	29	22
3	CRANIOTOMY AGE 0-17	3.0187	8.5	5.0	1	28	21
4	SPINAL PROCEDURES	2.2502	6.8	4.3	1	28	21
5	EXTRACRANIAL VASCULAR PROCEDURES	1.6238	3.2	2.7	1	15	8
6	CARPAL TUNNEL RELEASE	0.7419*	3.4	2.4	1	26	26
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.5566	10.1	5.9	1	29	22
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.1430	2.9	2.0	1	20	9
9	SPINAL DISORDERS & INJURIES	1.8664	10.3	4.9	1	28	21
10	NERVOUS SYSTEM NEOPLASMS W CC	1.2976	6.4	4.5	1	28	21
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.7454	3.1	2.3	1	22	9
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.4476	9.8	5.5	1	29	22
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.8844	6.3	4.2	1	28	20
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.3875	6.2	4.5	1	28	21
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.8050	3.4	2.6	1	20	9
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.5713	6.4	5.0	1	28	20
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.6677	2.6	2.1	1	15	7
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9527	5.3	3.8	1	27	18
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.5950	3.1	2.6	1	16	8
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.4797	9.0	6.5	1	30	23
21	VIRAL MENINGITIS	0.6281	3.4	2.8	1	15	8
22	HYPERTENSIVE ENCEPHALOPATHY	1.0218	4.8	2.8	1	26	18
23	NONTRAUMATIC STUPOR & COMA	0.6898	3.2	2.4	1	23	10
24	SEIZURE & HEADACHE AGE >17 W CC	0.8152	3.6	2.9	1	22	10
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.5986	3.0	2.3	1	18	8
26	SEIZURE & HEADACHE AGE 0-17	0.5081	2.6	2.1	1	14	7
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.5906	5.0	2.8	1	26	19
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.4443	6.2	3.8	1	27	20
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.5668	2.5	2.0	1	14	7
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.5792	2.9	1.9	1	18	8
31	CONCUSSION AGE >17 W CC	1.0640	4.7	2.9	1	26	18
32	CONCUSSION AGE >17 W/O CC	0.3838	1.7	1.5	1	7	4
33	CONCUSSION AGE 0-17	0.3107	1.4	1.3	1	4	3
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.1348	5.9	3.5	1	27	20
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.5190	3.1	2.1	1	21	9
36	RETINAL PROCEDURES	0.8930	1.6	1.3	1	5	3
37	ORBITAL PROCEDURES	1.2022	3.6	2.6	1	26	12
38	PRIMARY IRIS PROCEDURES	0.4282*	2.6	1.9	1	17	17
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.5184*	2.0	1.5	1	10	10
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.7072*	3.4	2.2	1	26	26
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.7072	1.6	1.4	1	6	3
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.9538	2.4	1.8	1	15	7
43	HYPHEMA	0.3185	3.4	2.9	1	19	9
44	ACUTE MAJOR EYE INFECTIONS	0.5600	3.6	3.0	1	18	9
45	NEUROLOGICAL EYE DISORDERS	0.5398	2.9	2.5	1	13	7
46	OTHER DISORDERS OF THE EYE AGE >17 W CC	0.6875	4.5	2.6	1	26	16
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.4003	2.2	1.8	1	10	5
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.3460	2.2	1.8	1	11	6
49	MAJOR HEAD & NECK PROCEDURES	2.7681	5.3	3.9	1	27	17
50	SIALOADENECTOMY	1.0083	1.7	1.5	1	6	3

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.7345*	2.9	1.9	1	20	20
52	CLEFT LIP & PALATE REPAIR	0.7596	1.9	1.6	1	8	4
53	SINUS & MASTOID PROCEDURES AGE >17	1.2677	2.6	1.9	1	17	7
54	SINUS & MASTOID PROCEDURES AGE 0-17	1.4719	4.9	2.9	1	26	19
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	1.1393	3.1	2.1	1	25	10
56	RHINOPLASTY	0.9552	1.7	1.5	1	6	3
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.7369	2.4	2.0	1	12	6
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.7229	2.7	2.1	1	16	7
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.5452	1.6	1.4	1	6	3
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.4274	1.5	1.3	1	5	3
61	MYRINGOTOMY W TUBE INSERTION AGE >17	1.1960*	5.1	2.7	1	27	27
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.5774	1.9	1.6	1	9	4
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.3659	2.7	2.0	1	16	7
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	0.8950	4.4	2.9	1	26	17
65	DYSEQUILIBRIUM	0.4645	2.1	1.8	1	9	5
66	EPISTAXIS	0.6415	3.3	2.8	1	17	9
67	EPIGLOTTITIS	1.7129	5.7	3.6	1	27	20
68	OTITIS MEDIA & URI AGE >17 W CC	0.5784	3.4	2.8	1	18	9
69	OTITIS MEDIA & URI AGE >17 W/O CC	0.4889	2.6	2.2	1	13	6
70	OTITIS MEDIA & URI AGE 0-17	0.3794	2.6	2.3	1	11	6
71	LARYNGOTRACHEITIS	0.3190	1.9	1.6	1	7	4
72	NASAL TRAUMA & DEFORMITY	0.6532*	4.4	3.1	1	27	27
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.6340	3.6	2.9	1	21	10
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.3879	2.5	1.9	1	13	6
75	MAJOR CHEST PROCEDURES	3.2615	9.0	7.0	1	31	24
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.7302	9.0	6.6	1	30	23
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2858	3.9	2.8	1	26	13
78	PULMONARY EMBOLISM	1.5618	6.8	6.0	1	29	16
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.9230	7.9	6.3	1	30	23
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.8871	4.6	3.7	1	27	13
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.3026	5.4	4.0	1	27	18
82	RESPIRATORY NEOPLASMS	1.5446	6.6	4.6	1	28	21
83	MAJOR CHEST TRAUMA W CC	1.1371	5.1	3.9	1	27	16
84	MAJOR CHEST TRAUMA W/O CC	0.6961	2.9	1.9	1	18	8
85	PLEURAL EFFUSION W CC	1.4694	6.0	4.6	1	28	20
86	PLEURAL EFFUSION W/O CC	0.7627	4.8	3.5	1	27	18
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.6074	6.4	4.8	1	28	21
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0120	5.0	4.1	1	27	13
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.1113	5.2	4.4	1	26	14
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.6905	3.8	3.2	1	17	9
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.5631	3.2	2.7	1	14	7
92	INTERSTITIAL LUNG DISEASE W CC	1.1158	4.9	3.7	1	27	15
93	INTERSTITIAL LUNG DISEASE W/O CC	1.2515	5.0	3.9	1	27	18
94	PNEUMOTHORAX W CC	1.0979	5.4	4.3	1	28	15
95	PNEUMOTHORAX W/O CC	0.5733	3.7	3.1	1	19	10
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.8374	4.2	3.5	1	23	11
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5871	3.1	2.6	1	16	8
98	BRONCHITIS & ASTHMA AGE 0-17	0.4958	2.7	2.3	1	13	7
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.7551	2.9	2.3	1	17	8
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.4955	1.9	1.6	1	8	4

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.9668	4.1	2.7	1	26	13
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.4637	2.1	1.6	1	10	5
103	HEART TRANSPLANT	-	-	-	-	-	
104	CARDIAC VALVE PROCEDURES W CARDIAC CATH	8.5547	12.1	10.0	1	33	26
105	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	5.7182	8.1	6.8	1	30	21
106	CORONARY BYPASS W CARDIAC CATH	6.1094	9.0	8.2	2	30	18
107	CORONARY BYPASS W/O CARDIAC CATH	4.5041	6.9	6.3	1	20	13
108	OTHER CARDIOTHORACIC PROCEDURES	4.7371	7.6	6.3	1	30	20
109	NO LONGER VALID	-	-	-	-	-	
110	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.5611	9.1	6.7	1	30	23
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.3655	5.6	5.0	1	23	13
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.4620	3.6	2.9	1	23	11
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	4.1089	13.4	9.9	1	33	26
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.9487	11.5	5.2	1	29	22
115	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	4.0012	8.0	6.4	1	30	23
116	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GENERATOR PRO	2.8922	3.9	3.0	1	26	12
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.5187	3.2	2.3	1	23	10
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5825*	3.2	2.1	1	25	25
119	VEIN LIGATION & STRIPPING	0.9975	2.5	1.9	1	16	7
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.5572	9.1	5.8	1	29	22
121	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.8351	5.2	4.1	1	28	16
122	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.3400	3.9	3.2	1	21	10
123	CIRCULATORY DISORDERS W AMI, EXPIRED	1.8685	3.2	2.1	1	26	10
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.3805	3.5	2.8	1	20	10
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	1.0196	2.2	1.8	1	11	5
126	ACUTE & SUBACUTE ENDOCARDITIS	3.1915	10.0	8.0	1	31	24
127	HEART FAILURE & SHOCK	1.1678	5.1	3.9	1	27	15
128	DEEP VEIN THROMBOPHLEBITIS	0.9663	6.1	5.3	1	26	15
129	CARDIAC ARREST, UNEXPLAINED	1.6127	3.6	2.3	1	26	13
130	PERIPHERAL VASCULAR DISORDERS W CC	1.0709	6.4	4.9	1	28	19
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7561	5.2	4.4	1	28	14
132	ATHEROSCLEROSIS W CC	0.6529	2.5	2.0	1	12	6
133	ATHEROSCLEROSIS W/O CC	0.6666	2.1	1.7	1	10	5
134	HYPERTENSION	0.5812	2.7	2.2	1	14	7
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	1.0732	3.6	2.9	1	20	10
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.6651	2.5	1.8	1	17	7
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.5667	3.1	2.4	1	22	10
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.7683	3.3	2.5	1	21	10
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.4640	2.1	1.7	1	9	5
140	ANGINA PECTORIS	0.5697	2.3	1.9	1	10	5
141	SYNCOPE & COLLAPSE W CC	0.6809	2.9	2.2	1	18	8
142	SYNCOPE & COLLAPSE W/O CC	0.4679	2.0	1.7	1	8	4
143	CHEST PAIN	0.4996	1.8	1.5	1	6	4
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.5499	5.8	4.1	1	28	20
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.6928	2.6	2.0	1	14	7
146	RECTAL RESECTION W CC	2.6687	8.4	7.8	2	25	16
147	RECTAL RESECTION W/O CC	1.9639	6.8	5.6	1	29	22
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.5448	10.9	9.0	1	32	25
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.7016	6.0	5.3	1	26	15
150	PERITONEAL ADHESIOLYSIS W CC	2.3179	8.3	6.7	1	30	23

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
151	PERITONEAL ADHESIOLYSIS W/O CC	1.3520	5.0	4.0	1	28	15
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.7852	6.7	5.9	1	27	15
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0875	4.7	4.3	1	20	11
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	4.1707	11.5	8.7	1	32	25
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.5479	3.8	3.2	1	18	10
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.2253	5.7	3.9	1	27	18
157	ANAL & STOMAL PROCEDURES W CC	1.0198	3.9	2.8	1	26	12
158	ANAL & STOMAL PROCEDURES W/O CC	0.7151	2.4	2.1	1	11	6
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.2235	4.2	3.4	1	24	12
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.9092	2.8	2.3	1	15	7
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	0.9549	2.9	2.3	1	19	9
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.7564	1.7	1.4	1	7	3
163	HERNIA PROCEDURES AGE 0-17	0.6361	1.7	1.5	1	7	4
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.0493	7.7	6.6	1	30	19
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2106	4.7	4.0	1	23	12
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.0968	3.5	2.9	1	17	9
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.7772	2.3	2.0	1	8	5
168	MOUTH PROCEDURES W CC	1.2590	4.4	3.4	1	27	15
169	MOUTH PROCEDURES W/O CC	0.9394	1.7	1.5	1	6	3
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	3.5134	10.8	7.7	1	31	24
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.0603	3.6	2.9	1	20	10
172	DIGESTIVE MALIGNANCY W CC	1.9124	8.4	5.2	1	29	22
173	DIGESTIVE MALIGNANCY W/O CC	0.8354	4.2	3.0	1	26	15
174	G.I. HEMORRHAGE W CC	1.0330	4.0	3.3	1	21	11
175	G.I. HEMORRHAGE W/O CC	0.5172	2.5	2.1	1	11	6
176	COMPLICATED PEPTIC ULCER	1.0314	4.5	3.5	1	27	13
177	UNCOMPLICATED PEPTIC ULCER W CC	0.7777	4.1	3.1	1	26	12
178	UNCOMPLICATED PEPTIC ULCER W/O CC	0.6982	2.6	2.3	1	11	6
179	INFLAMMATORY BOWEL DISEASE	0.8926	5.4	4.2	1	28	16
180	G.I. OBSTRUCTION W CC	0.9353	4.9	3.8	1	27	14
181	G.I. OBSTRUCTION W/O CC	0.4718	3.0	2.4	1	16	8
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.6937	3.4	2.7	1	20	9
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.5596	2.6	2.1	1	14	7
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.3129	2.2	1.9	1	10	5
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.8262	3.6	2.4	1	26	12
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.3824	2.1	1.7	1	10	5
187	DENTAL EXTRACTIONS & RESTORATIONS	0.7431	2.8	2.3	1	18	8
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0272	4.7	3.6	1	27	14
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5392	2.8	2.3	1	17	8
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.4693	2.6	1.8	1	16	7
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC	5.4036	17.5	11.7	1	35	28
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	2.1594	6.9	6.2	1	26	15
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	2.6089	8.9	7.2	1	31	24
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	1.6355	5.8	4.9	1	28	15
195	CHOLECYSTECTOMY W C.D.E. W CC	2.3506	6.5	5.4	1	29	18
196	CHOLECYSTECTOMY W C.D.E. W/O CC	1.5359	5.0	4.7	1	15	10
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	2.1105	6.4	5.4	1	29	16
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	1.2772	3.7	3.4	1	12	8
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	3.2860	9.5	6.3	1	30	23
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	3.5956	10.7	5.0	1	28	21

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	6.5191	16.6	9.2	1	33	26
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.6238	6.3	4.5	1	28	21
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3445	6.1	4.4	1	28	21
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2214	5.6	4.3	1	28	17
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.3105	6.1	4.2	1	28	21
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.6111	3.2	2.3	1	24	10
207	DISORDERS OF THE BILIARY TRACT W CC	1.0081	4.1	3.2	1	27	13
208	DISORDERS OF THE BILIARY TRACT W/O CC	0.4982	2.1	1.7	1	10	5
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY	2.6957	5.3	4.9	1	15	10
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	2.2850	7.4	6.4	1	30	18
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.5182	5.1	4.2	1	28	14
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.5046	6.0	3.7	1	27	20
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.6453	6.7	5.3	1	29	22
214	BACK & NECK PROCEDURES W CC	2.2980	4.9	3.7	1	27	15
215	BACK & NECK PROCEDURES W/O CC	1.2521	2.5	2.1	1	12	6
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.5062	5.4	3.9	1	27	20
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	3.0780	11.8	7.5	1	31	24
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	1.6431	4.7	3.7	1	27	13
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	1.0812	2.6	2.3	1	12	6
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.8209	1.8	1.5	1	7	4
221	KNEE PROCEDURES W CC	1.5571	3.6	2.8	1	23	11
222	KNEE PROCEDURES W/O CC	1.1173	2.1	1.7	1	9	5
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.9365	2.0	1.7	1	9	5
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.9285	1.8	1.6	1	6	3
225	FOOT PROCEDURES	0.9032	2.3	1.8	1	12	6
226	SOFT TISSUE PROCEDURES W CC	1.4810	4.9	3.4	1	27	17
227	SOFT TISSUE PROCEDURES W/O CC	0.8206	2.3	1.8	1	12	6
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	1.1009	2.5	2.0	1	14	7
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.6765	1.9	1.6	1	8	4
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	1.0937	3.2	2.0	1	23	9
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	1.0463	2.7	2.1	1	15	7
232	ARTHROSCOPY	1.0354	2.1	1.6	1	13	6
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.1829	7.1	5.0	1	29	22
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.4133	3.2	2.4	1	22	10
235	FRACTURES OF FEMUR	1.0174	7.8	4.1	1	28	21
236	FRACTURES OF HIP & PELVIS	0.9629	8.2	5.4	1	29	22
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.7181	4.1	2.7	1	26	16
238	OSTEOMYELITIS	1.4014	10.4	5.9	1	29	22
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.4775	7.3	5.2	1	29	22
240	CONNECTIVE TISSUE DISORDERS W CC	1.2342	5.2	4.0	1	27	16
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.6459	3.3	2.5	1	21	10
242	SEPTIC ARTHRITIS	0.9994	6.6	4.6	1	28	21
243	MEDICAL BACK PROBLEMS	0.6379	3.9	2.9	1	26	12
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.9535	6.3	4.2	1	28	21
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.5387	4.1	3.3	1	25	12
246	NON-SPECIFIC ARTHROPATHIES	0.5851	3.8	2.9	1	26	14
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.6399	3.8	2.5	1	26	13
248	TENDONITIS, MYOSITIS & BURSITIS	0.7645	4.4	2.9	1	26	16
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.6315	4.4	2.5	1	26	17
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.6422	3.6	2.3	1	26	14

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.5423	1.8	1.5	1	7	4
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.4163	1.6	1.3	1	5	3
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.7725	4.9	3.2	1	27	17
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.4639	2.8	2.1	1	17	8
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.4383	2.0	1.6	1	10	5
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.8396	4.1	2.5	1	26	15
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.1435	2.8	2.3	1	14	7
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	1.0325	2.2	2.0	1	8	5
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.8868	2.2	1.7	1	11	5
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7767	1.5	1.4	1	4	3
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1.0995	1.5	1.3	1	5	3
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.7523	1.8	1.6	1	6	3
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.3439	11.2	8.0	1	31	24
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.3752	6.0	4.1	1	28	21
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	2.4877	6.7	4.1	1	28	21
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O C	1.1182	3.0	2.0	1	23	9
267	PERIANAL & PILONIDAL PROCEDURES	0.8330*	4.3	2.8	1	27	27
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.3206	2.6	2.2	1	12	6
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.5607	6.1	4.3	1	28	21
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.8355	2.7	1.9	1	17	8
271	SKIN ULCERS	1.4559	9.2	5.9	1	29	22
272	MAJOR SKIN DISORDERS W CC	0.9523	5.1	3.8	1	27	16
273	MAJOR SKIN DISORDERS W/O CC	0.4841	3.7	2.5	1	26	11
274	MALIGNANT BREAST DISORDERS W CC	1.2599	15.7	6.5	1	30	23
275	MALIGNANT BREAST DISORDERS W/O CC	0.5085*	3.7	2.5	1	27	27
276	NON-MALIGANT BREAST DISORDERS	0.5912	2.6	2.3	1	10	6
277	CELLULITIS AGE >17 W CC	0.8611	5.2	4.2	1	28	14
278	CELLULITIS AGE >17 W/O CC	0.5650	3.9	3.2	1	18	9
279	CELLULITIS AGE 0-17	0.4665	3.0	2.6	1	14	7
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.7802	4.0	2.6	1	26	15
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.4535	1.8	1.5	1	8	4
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.5907	1.9	1.6	1	8	4
283	MINOR SKIN DISORDERS W CC	0.5377	3.8	2.9	1	25	11
284	MINOR SKIN DISORDERS W/O CC	0.4404	2.6	2.0	1	15	7
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.3106	11.0	8.1	1	32	25
286	ADRENAL & PITUITARY PROCEDURES	2.0836	5.7	4.9	1	22	13
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.9792	8.6	6.2	1	30	23
288	O.R. PROCEDURES FOR OBESITY	1.7730	4.1	3.8	1	12	8
289	PARATHYROID PROCEDURES	0.9083	2.2	1.9	1	8	5
290	THYROID PROCEDURES	0.8611	1.9	1.6	1	6	4
291	THYROGLOSSAL PROCEDURES	0.5189*	1.8	1.4	1	8	8
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	4.7219	17.0	8.4	1	32	25
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2671*	6.8	4.6	1	29	29
294	DIABETES AGE >35	0.7962	4.3	3.4	1	26	12
295	DIABETES AGE 0-35	0.5226	3.0	2.6	1	14	7
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.9613	4.8	3.4	1	27	15
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.4345	2.8	2.1	1	14	7
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.3129	2.3	1.9	1	10	5
299	INBORN ERRORS OF METABOLISM	0.7585	4.9	3.3	1	27	16
300	ENDOCRINE DISORDERS W CC	1.0896	5.0	3.6	1	27	17

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
301	ENDOCRINE DISORDERS W/O CC	0.4501	2.1	1.8	1	9	5
302	KIDNEY TRANSPLANT	4.1671	9.9	8.6	1	32	22
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.5126	7.3	6.2	1	29	16
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	1.8074	5.9	4.8	1	28	17
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.1954	3.8	3.2	1	20	10
306	PROSTATECTOMY W CC	1.3531	4.1	3.1	1	25	12
307	PROSTATECTOMY W/O CC	0.6708*	3.0	2.4	1	15	15
308	MINOR BLADDER PROCEDURES W CC	1.6441	6.1	4.3	1	28	19
309	MINOR BLADDER PROCEDURES W/O CC	0.9884	2.6	2.1	1	14	7
310	TRANSURETHRAL PROCEDURES W CC	1.0485	2.6	2.1	1	13	7
311	TRANSURETHRAL PROCEDURES W/O CC	0.8025	2.0	1.8	1	8	4
312	URETHRAL PROCEDURES, AGE >17 W CC	0.9124*	4.8	3.2	1	27	27
313	URETHRAL PROCEDURES, AGE >17 W/O CC	0.5223*	2.3	1.8	1	13	13
314	URETHRAL PROCEDURES, AGE 0-17	0.4836*	2.3	2.3	1	26	26
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.1107	7.0	4.2	1	28	21
316	RENAL FAILURE	1.5703	6.1	4.4	1	28	21
317	ADMIT FOR RENAL DIALYSIS	0.4845*	2.9	1.9	1	20	20
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1844	4.7	3.3	1	27	17
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.5772*	3.2	2.3	1	24	24
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.7815	4.0	3.3	1	21	11
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.5876	3.3	2.8	1	14	8
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.4899	3.5	3.0	1	15	8
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.7049	2.6	2.0	1	16	7
324	URINARY STONES W/O CC	0.4070	1.7	1.5	1	6	4
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.7085	3.4	2.9	1	18	9
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.4551	1.9	1.6	1	8	4
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.2341*	3.1	3.1	1	27	27
328	URETHRAL STRICTURE AGE >17 W CC	0.6886*	4.3	3.1	1	27	27
329	URETHRAL STRICTURE AGE >17 W/O CC	0.4567*	2.8	2.1	1	17	17
330	URETHRAL STRICTURE AGE 0-17	0.3115*	1.6	1.6	1	9	9
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.9920	4.8	3.4	1	27	16
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6847	2.8	2.0	1	19	8
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.5295	3.5	2.6	1	23	10
334	MAJOR MALE PELVIC PROCEDURES W CC	1.8097	4.6	4.3	1	13	9
335	MAJOR MALE PELVIC PROCEDURES W/O CC	1.4843	3.8	3.5	1	13	8
336	TRANSURETHRAL PROSTATECTOMY W CC	0.7945	2.5	2.2	1	11	6
337	TRANSURETHRAL PROSTATECTOMY W/O CC	0.7741	2.1	1.9	1	7	4
338	TESTES PROCEDURES, FOR MALIGNANCY	1.0499*	5.3	3.5	1	27	27
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.9011	3.3	2.2	1	26	12
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.5294	1.2	1.2	1	2	2
341	PENIS PROCEDURES	1.4899	2.5	1.6	1	15	6
342	CIRCUMCISION AGE >17	0.7578*	4.0	2.7	1	27	27
343	CIRCUMCISION AGE 0-17	0.1504*	1.7	1.7	1	6	6
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0865	2.0	1.7	1	9	5
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.7120	1.9	1.8	1	6	4
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.7439	8.7	4.4	1	28	21
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.5096*	3.3	2.4	1	25	25
348	BENIGN PROSTATIC HYPERTROPHY W CC	0.7148	2.8	2.3	1	17	8
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.5553	1.9	1.7	1	7	4
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6064	3.5	2.9	1	19	9

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
351	STERILIZATION, MALE	0.2309*	1.3	1.3	1	5	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.5877*	3.9	2.8	1	27	27
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	1.8277	5.2	4.6	1	21	12
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.3152	4.0	3.6	1	14	8
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	0.9662	2.9	2.6	1	9	6
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.8700	2.6	2.3	1	9	5
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	2.2873	7.0	5.7	1	29	18
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1942	3.4	3.0	1	11	7
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.9694	2.6	2.4	1	7	5
360	VAGINA, CERVIX & VULVA PROCEDURES	0.9707	2.9	2.4	1	13	7
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.9705	2.6	2.1	1	14	7
362	ENDOSCOPIC TUBAL INTERRUPTION	0.2951*	1.4	1.4	1	5	5
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.7216	2.5	2.1	1	11	6
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.6366	2.0	1.7	1	9	5
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.2033	3.9	3.1	1	22	10
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.1364	6.0	4.2	1	28	21
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.6525	1.9	1.6	1	8	4
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.5637	3.2	2.7	1	15	8
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.4103	1.9	1.6	1	8	4
370	CESAREAN SECTION W CC	1.0184	4.2	3.7	1	14	9
371	CESAREAN SECTION W/O CC	0.7968	3.1	3.0	1	7	5
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5473	2.3	2.0	1	9	5
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3989	1.6	1.5	1	5	3
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.6920	2.0	1.8	1	6	3
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.8764	2.5	2.1	1	12	6
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4953	2.8	2.2	1	16	8
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.8819	3.8	2.3	1	26	13
378	ECTOPIC PREGNANCY	0.9531	2.3	2.0	1	9	5
379	THREATENED ABORTION	0.5472	3.6	2.4	1	26	11
380	ABORTION W/O D&C	0.4187	1.6	1.4	1	5	3
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.5570	1.6	1.3	1	5	3
382	FALSE LABOR	0.2275	1.4	1.2	1	4	2
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.3824	2.7	2.1	1	15	7
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.4508	3.0	1.9	1	20	8
385	NO LONGER VALID	-	-	-	-	-	
386	NO LONGER VALID	-	-	-	-	-	
387	NO LONGER VALID	-	-	-	-	-	
388	NO LONGER VALID	-	-	-	-	-	
389	NO LONGER VALID	-	-	-	-	-	
390	NO LONGER VALID	-	-	-	-	-	
391	NORMAL NEWBORN	0.1080	1.7	1.5	1	5	3
392	SPLENECTOMY AGE >17	2.3016	6.1	5.2	1	29	17
393	SPLENECTOMY AGE 0-17	1.5932	5.3	4.9	1	17	11
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.2422	3.8	2.8	1	26	12
395	RED BLOOD CELL DISORDERS AGE >17	0.8178	4.1	3.0	1	26	13
396	RED BLOOD CELL DISORDERS AGE 0-17	0.7224	4.2	3.2	1	27	13
397	COAGULATION DISORDERS	1.1371	3.6	2.8	1	23	11
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2301	5.5	4.3	1	28	16
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.6291	3.6	2.9	1	21	10
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.4726	7.7	5.0	1	28	21

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	3.9390	13.1	7.4	1	31	24
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	0.9919	3.2	2.4	1	21	9
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2.7004	9.2	6.1	1	30	23
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.9780	4.9	3.2	1	27	17
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	2.4878	9.3	5.5	1	29	22
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	3.0813	8.5	6.2	1	30	23
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.1929	3.8	3.1	1	22	11
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.9158	6.9	4.1	1	28	21
409	RADIOTHERAPY	1.0172	4.7	3.4	1	27	14
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	0.9588	3.1	2.5	1	18	9
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.3837*	2.7	2.1	1	16	16
412	HISTORY OF MALIGNANCY W ENDOSCOPY	0.4080*	3.0	2.1	1	23	23
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.2698	5.1	3.7	1	27	17
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.9828	5.9	2.7	1	26	19
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5098	12.1	7.8	1	31	24
416	SEPTICEMIA AGE >17	1.9942	7.5	5.6	1	29	22
417	SEPTICEMIA AGE 0-17	0.8875	4.8	3.8	1	27	14
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.9203	5.2	4.1	1	28	15
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	1.1071	5.1	4.2	1	28	14
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.5501	2.6	2.2	1	13	7
421	VIRAL ILLNESS AGE >17	0.6780	3.4	2.7	1	20	10
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.3945	2.6	2.3	1	11	6
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.3645	5.5	4.2	1	28	16
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3637*	18.0	10.9	1	35	35
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	0.6624	4.3	3.1	1	27	14
426	DEPRESSIVE NEUROSES	0.7814	7.1	4.9	1	28	21
427	NEUROSES EXCEPT DEPRESSIVE	0.7059	6.0	3.7	1	27	20
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.8973	9.1	6.4	1	30	23
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.3190	16.9	11.0	1	34	27
430	PSYCHOSES	1.0161	8.9	6.7	1	30	23
431	CHILDHOOD MENTAL DISORDERS	1.3343	13.8	7.8	1	31	24
432	OTHER MENTAL DISORDER DIAGNOSES	0.7363*	6.5	3.9	1	28	28
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.4283	4.3	3.3	1	27	13
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	0.8039	5.0	3.7	1	27	17
435	NO LONGER VALID	-	-	-	-	-	-
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	0.9040	15.6	13.5	2	37	30
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	0.9382	11.7	9.6	1	33	26
438	NO LONGER VALID	-	-	-	-	-	-
439	SKIN GRAFTS FOR INJURIES	1.5238	5.8	4.2	1	28	20
440	WOUND DEBRIDEMENTS FOR INJURIES	1.5133	6.0	4.0	1	28	21
441	HAND PROCEDURES FOR INJURIES	1.3570	3.4	2.4	1	26	12
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.2757	6.8	4.7	1	28	21
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.0589	2.7	2.2	1	16	8
444	TRAUMATIC INJURY AGE >17 W CC	0.7688	4.6	3.5	1	27	13
445	TRAUMATIC INJURY AGE >17 W/O CC	0.6062	3.7	2.8	1	26	12
446	TRAUMATIC INJURY AGE 0-17	0.3957	2.4	1.7	1	15	7
447	ALLERGIC REACTIONS AGE >17	0.4017	2.0	1.6	1	9	4
448	ALLERGIC REACTIONS AGE 0-17	0.2309	2.0	1.6	1	11	5
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.8060	3.0	2.2	1	21	9
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.4233	1.8	1.4	1	7	4

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.4041	1.9	1.5	1	9	4
452	COMPLICATIONS OF TREATMENT W CC	0.9362	4.2	3.0	1	26	14
453	COMPLICATIONS OF TREATMENT W/O CC	0.5123	2.7	2.0	1	17	7
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	0.8578	3.3	2.1	1	26	11
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.3508	1.3	1.2	1	3	2
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.8327*	8.4	4.1	1	28	28
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.4657*	4.8	2.4	1	26	26
458	NON-EXTENSIVE BURNS W SKIN GRAFT	3.8688	14.1	10.0	1	33	26
459	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.5182	8.2	6.7	1	30	23
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.7146	4.1	2.9	1	26	14
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	2.5345	12.7	4.9	1	28	21
462	REHABILITATION	1.7871	13.2	9.6	1	33	26
463	SIGNS & SYMPTOMS W CC	0.9645	5.3	3.5	1	27	19
464	SIGNS & SYMPTOMS W/O CC	0.9057	4.6	2.4	1	26	15
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.5571*	3.9	2.3	1	26	26
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1.3157	10.2	5.1	1	29	22
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.5593	2.9	1.9	1	20	8
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3.0138	9.2	5.3	1	29	22
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	-	-	-	-	-	
470	UNGROUPABLE	-	-	-	-	-	
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.7644	6.7	5.9	1	25	15
472	EXTENSIVE BURNS W O.R. PROCEDURE	19.5607	37.3	27.2	2	51	44
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	7.6642	21.5	13.0	1	36	29
474	NO LONGER VALID	-	-	-	-	-	
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	4.0516	9.4	6.4	1	30	23
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2479*	13.9	10.3	1	34	34
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.7727	6.8	3.8	1	27	20
478	OTHER VASCULAR PROCEDURES W CC	2.9410	6.4	4.4	1	28	21
479	OTHER VASCULAR PROCEDURES W/O CC	1.6510	3.4	2.6	1	22	10
480	LIVER TRANSPLANT	-	-	-	-	-	
481	BONE MARROW TRANSPLANT	11.2299*	32.6	29.7	1	54	54
482	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	6.2171	15.7	11.0	1	35	28
483	TRACHEOSTOMY EXCEPT FOR FACE,MOUTH & NECK DIAGNOSES	19.9022	38.2	28.8	2	52	45
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	8.3087	13.1	9.5	1	33	26
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT T	5.7580	13.6	12.0	2	36	29
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	6.0443	12.5	9.2	1	33	26
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	2.0154	7.0	4.7	1	28	21
488	HIV W EXTENSIVE O.R. PROCEDURE	4.7905*	20.5	14.3	1	38	38
489	HIV W MAJOR RELATED CONDITION	2.7957	8.5	6.2	1	30	23
490	HIV W OR W/O OTHER RELATED CONDITION	1.2220	6.3	4.3	1	28	21
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	1.9078	2.5	2.3	1	7	5
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	1.8685	8.5	4.7	1	28	21
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.7104	4.1	3.4	1	23	11
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.1073	2.1	1.7	1	10	5
495	LUNG TRANSPLANT	9.2870*	22.7	18.0	1	42	42
600	NEONATE, DIED W/IN ONE DAY OF BIRTH	0.5155	1.0	1.0	1	1	1
601	NEONATE, TRANSFERRED <5 DAYS OLD	0.4907	1.3	1.2	1	2	2
602	NEONATE, BIRTHWT <750G, DISCHARGED ALIVE	22.5510	71.3	51.4	1	68	68
603	NEONATE, BIRTHWT <750G, DIED	6.5517#	10.5	6.4	1	23	23
604	NEONATE, BIRTHWT 750-999G, DISCHARGED ALIVE	16.4257	63.2	54.0	7	70	70

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
605	NEONATE, BIRTHWT 750-999G, DIED	10.7312#	28.8	16.5	1	33	33
606	NEONATE, BIRTHWT 1000-1499G, W SIGNIF OR PROC, DISCHARGED ALIVE	21.1265#	73.9	65.9	17	82	82
607	NEONATE, BIRTHWT 1000-1499G, W/O SIGNIF OR PROC, DISCHARGED ALIV	9.3559	38.2	31.8	4	48	48
608	NEONATE, BIRTHWT 1000-1499G, DIED	5.1370#	7.5	6.5	2	20	20
609	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W MULT MAJOR PROB	10.1724#	32.5	29.1	10	46	46
610	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W/O MULT MAJOR PR	5.0499#	26.9	24.2	9	38	38
611	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MULT MAJOR PR	6.6741	26.4	22.4	3	39	39
612	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MAJOR PROB	3.5190	17.8	14.4	1	31	31
613	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MINOR PROB	2.8828	17.2	15.5	3	32	32
614	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W OTHER PROB	1.2854	10.1	7.6	1	24	24
615	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	5.9989#	19.0	16.2	3	33	33
616	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W/O MULT MAJOR PR	5.9576#	26.7	18.6	3	34	34
617	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MULT MAJOR PR	4.7855	15.4	13.7	2	30	30
618	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MAJOR PROB	2.4179	10.2	8.9	1	24	24
619	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MINOR PROB	1.5747	9.0	6.9	1	23	23
620	NO LONGER VALID	-	-	-	-	-	
621	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.4497	3.7	2.8	1	11	11
622	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	5.7037	14.6	10.7	1	27	27
623	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W/O MULT MAJOR PROB	3.2414	10.5	5.5	1	22	22
624	NEONATE, BIRTHWT >2499G, W MINOR ABDOM PROCEDURE	0.8747	4.0	3.0	1	12	12
625	NO LONGER VALID	-	-	-	-	-	
626	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MULT MAJOR PROB	2.6642	9.1	6.1	1	23	23
627	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MAJOR PROB	0.9937	4.8	3.6	1	15	15
628	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MINOR PROB	0.6516	4.0	3.2	1	11	11
629	NO LONGER VALID	-	-	-	-	-	
630	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.1976	2.1	1.9	1	4	4
631	BPD AND OTH CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PE	4.0689#	15.0	11.1	2	27	27
632	OTHER RESPIRATORY PROBLEMS AFTER BIRTH	0.4537#	3.0	2.6	1	8	8
633	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	0.6634#	5.2	4.9	1	11	11
634	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	0.5277#	2.6	2.3	2	7	7
635	NEONATAL AFTERCARE FOR WEIGHT GAIN	0.5978#	9.8	6.8	1	23	23
636	NEONATAL DIAGNOSIS, AGE > 28 DAYS	3.2094	15.5	7.7	1	24	24
900	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE <= 21 W/O	0.9536	12.1	5.3	1	29	22
901	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE > 21 W/O	0.5756	5.0	3.6	1	27	17

[FR Doc. 96–26531 Filed 10–16–96; 8:45 am]

BILLING CODE 5000–04–C

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the Disposal of McClellan Air Force Base, California

The United States Air Force (Air Force) is issuing this notice to advise the public that the Air Force intends to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts in support of decision making for the disposal of McClellan Air Force Base, in Sacramento, California. The resulting EIS will be considered in making disposal decisions that will be documented in the Air Force's Record of Decision.

The EIS will address the potential environmental impacts of disposal of the property resulting from closure of McClellan AFB pursuant to the Defense Base Closure and Realignment Act (DBCRA), as amended. The EIS will also address the potential environmental impacts of reasonable disposal alternatives.

The scoping period for the McClellan AFB Disposal EIS will extend through December 13, 1996. On November 14, 1996 starting at 7:00 pm, a formal scoping meeting will be held at the North Highlands Community Center, 6040 Watt Avenue, North Highlands, California, 95660. The purpose of the scoping meeting is to provide a forum for public officials and the community to provide information and comments, and to identify environmental issues and concerns that need to be assessed and discussed in the EIS. During the meeting, the Air Force will discuss the proposal to dispose of portions of McClellan AFB, describe the process involved in preparing an EIS, and ask for input in identifying alternate uses for the property. The Air Force will consider reasonable alternatives offered by any federal, state, or local government agency, as well as any individual or private entity.

To ensure the Air Force will have sufficient time to consider public inputs on issues to be included in the EIS, the Air Force recommends that comments and disposal proposals be presented at the earliest possible date. The Air Force will, however, accept additional comments at the address below at any time during the environmental impact analysis process.

Please direct written comments or requests for further information concerning the McClellan AFB disposal EIS to: Mr. Marc Garcia, SM-ALC/EMRO, 5050 Dudley Blvd., Suite 3, McClellan AFB, Sacramento, California 95652–1389, Phone: 916/643–0830 ext 167, Fax: 916/643–0827.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–26576 Filed 10–16–96; 8:45 am]

BILLING CODE 3910–01–P

Privacy Act of 1974; Alteration of a System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Alteration of a system of records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notices in its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding the Air Force Reserve and National Guard personnel (approximately 80,000 individuals) in the 'Categories of individuals covered by the system.'

DATES: The alteration will be effective on November 18, 1996, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, HQ USAF/SCMI, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 697–8674 or DSN 227–8674.

SUPPLEMENTARY INFORMATION: The complete inventory of Department of the Air Force system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on October 7, 1996, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 10, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AF MP L

SYSTEM NAME:

Unfavorable Information Files (UIF) *(November 7, 1994, 59 FR 55452).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Complete Unfavorable Information Files (UIFs) are maintained in the Unit Orderly Rooms and Military Personnel Flights at Air Force installations. Official mailing addresses are published as an appendix to the Air Force compilation of systems of records notices.

At Headquarters Air Reserve Personnel Center, 6760 East Irvington Place 4000, Denver CO 80280–4000; at Headquarters Air Force Reserve, 155 2nd Street, Robins Air Force Base, GA 31098–6001 and at Headquarters, Air National Guard, 3500 Fetchet Avenue, Andrews Air Force Base, MD 20762–5157.

A copy of the UIF summary sheet is maintained at individual's unit of assignment and geographically separated units not collocated with a servicing Military Personnel Flight and at the gaining unit for individuals selected for reassignment.

For officers through the grade of Lieutenant Colonel, the UIF summary sheet is also maintained at major command level. For colonels, colonel selects, and general officers the UIF summary sheet is also maintained at Headquarters Air Force level.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All active or reserve component (Air Force Reserve and Air National Guard) military personnel who are the subject of an UIF.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 36–2907, Unfavorable Information File Program.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'For enlisted personnel destroy 1 year after the effective date of placement into UIF.

For officers destroy 4 years, or PCS/transfer plus 1 year, whichever is later after the effective date of placement into UIF, the most recent unfavorable correspondence or document not related to administrative reprimand or admonition. When the UIF contains more than one document, destroy all records after 1 year for enlisted and after 4 years or PCS/transfer plus 1 year, whichever is later, for officers, from the effective date of the most recent unfavorable correspondence or document, except when longer retention is required. Enlisted files will be destroyed when a member is separated (without immediate return or continuation on active duty), retires or dies. Officer files will be transferred to the Air Reserve Component or destroyed if the member retires or dies. The disposition date for placement on the control roster is 1 year for officers and enlisted personnel. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Deputy Chief of Staff/Personnel, Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703;

Director of Personnel, Headquarters Air Reserve Personnel Center, 6760 East Irvington Place 4000, Denver, CO 80280–4000;

Director of Personnel, Headquarters Air Force Reserve, 155 2nd Street, Robins Air Force Base, GA 31098–6001; and

Director of Personnel, Headquarters, Air National Guard, 3500 Fetchet Avenue, Andrews Air Force Base, MD 20762–5157.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Personnel for whom optional UIFs exist are routinely notified of a file. In all cases personnel have had the opportunity or are authorized to rebut the correspondence in the file. Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the servicing Military Personnel Flight, Unit Orderly Room or the appropriate *System manager* identified above.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system should address inquiries to the servicing Military Personnel Flight, Unit Orderly Room, or the appropriate *System manager* identified above.'

* * * * *

F035 AF MP L

SYSTEM NAME:

Unfavorable Information Files (UIF).

SYSTEM LOCATION:

Complete Unfavorable Information Files (UIFs) are maintained in the Unit Orderly Rooms and Military Personnel Flights at Air Force installations. Official mailing addresses are published as an appendix to the Air Force compilation of systems of records notices.

At Headquarters Air Reserve Personnel Center, 6760 East Irvington Place 4000, Denver CO 80280–4000; at Headquarters Air Force Reserve, 155 2nd Street, Robins Air Force Base, GA 31098–6001 and at Headquarters, Air National Guard, 3500 Fetchet Avenue, Andrews Air Force Base, MD 20762–5157.

A copy of the UIF summary sheet is maintained at individual's unit of assignment and geographically separated units not collocated with a servicing Military Personnel Flight and at the gaining unit for individuals selected for reassignment.

For officers through the grade of Lieutenant Colonel, the UIF summary sheet is also maintained at major command level. For colonels, colonel selects, and general officers the UIF summary sheet is also maintained at Headquarters Air Force level.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active or reserve component (Air Force Reserve and Air National Guard) military personnel who are the subject of an UIF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Derogatory correspondence determined as mandatory for file or as appropriate for file by an individual's commander. Examples include written admonitions or reprimands; court-martial orders; letters of indebtedness, or control roster correspondence and drug/alcohol abuse correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 36–2907, Unfavorable Information File Program.

PURPOSE(S):

Reviewed by commanders and personnel officials to assure appropriate assignment, promotion and reenlistment considerations prior to effecting such actions. UIFs also provide information necessary to support administrative separation when further rehabilitation efforts would not be considered effective.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets and in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Computer records are protected by computer software.

RETENTION AND DISPOSAL:

For enlisted personnel destroy 1 year after the effective date of placement into UIF. For officers destroy 4 years, or PCS/transfer plus 1 year, whichever is later after the effective date of placement into UIF, the most recent unfavorable correspondence or document not related to administrative reprimand or admonition. When the UIF contains more than one document, destroy all records after 1 year for enlisted and after 4 years or PCS/transfer plus 1 year, whichever is later, for officers, from the effective date of the most recent unfavorable correspondence or document, except when longer retention is required. Enlisted files will be destroyed when a member is separated (without immediate return or continuation on active duty), retires or dies. Officer files will be transferred to the Air Reserve Component or destroyed

if the member retires or dies. The disposition date for placement on the control roster is 1 year for officers and enlisted personnel. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/Personnel, Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703;

Director of Personnel, Headquarters Air Reserve Personnel Center, 6760 East Irvington Place 4000, Denver, CO 80280–4000;

Director of Personnel, Headquarters Air Force Reserve, 155 2nd Street, Robins Air Force Base, GA 31098–6001; and

Director of Personnel, Headquarters, Air National Guard, 3500 Fetchet Avenue, Andrews Air Force Base, MD 20762–5157.

NOTIFICATION PROCEDURE:

Personnel for whom optional UIFs exist are routinely notified of a file. In all cases personnel have had the opportunity or are authorized to rebut the correspondence in the file. Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the servicing Military Personnel Flight, Unit Orderly Room or the appropriate System manager identified above.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address inquiries to the servicing Military Personnel Flight, Unit Orderly Room, or the appropriate System manager identified above.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Supervisory reports or censures and documented records of poor performance or conduct.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–26527 Filed 10–16–96; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Armed Forces Epidemiological Board (AFEB)

AGENCY: Office of The Surgeon General.

ACTION: Notice of closed meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB Disease Control Subcommittee Meeting. The meeting will be held from 0900–1630, Thursday, October 31, 1996. The purpose of the meeting is to have a classified AFEB update on the DoD Immunization Program for Biological Warfare Defense in accordance with DoD Directive 6205.3. The meeting location will be at USAMRIID, Fort Detrick, Frederick, Maryland. This meeting will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C., appendix 1, subsection 10(d).

FOR FURTHER INFORMATION CONTACT: COL Vicky Fogelman, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–26583 Filed 10–16–96; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Privacy Act of 1974; Notice to Add a System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Navy proposes to add one record systems to its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective without further notice on November 18, 1996, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 3, 1996, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 10, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01740–2

SYSTEM NAME:

Family Dependent Care Program.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy personnel serving on active duty or in the Ready Reserve who are single parents or members of dual military couples, that have custodial responsibility (i.e., housing, medical, logistical, financial, food, clothing, transportation, etc) for family members or other dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Family Care Plan package which includes NAVPERS 1740.6 - Family Care Plan Certificate, NAVPERS 1740.7 - Family Care Plan Arrangements, Family Care Plan Checklist, copies of powers of attorney, legal documents, allotment information, financial information, counseling forms, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, E.O. 9397, OPNAVINST 1740.4A, U.S. Navy Family Care Policy.

PURPOSE(S):

To ensure family members are cared for during deployments, reserve

mobilizations, temporary duty, etc and that arrangements are in place for the financial well-being of family members covered by the Family Care Plan during separations.

Utilized by command financial specialists, Family Service Centers, and legal assistance offices for providing guidance and assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours. Automated records are password protected.

RETENTION AND DISPOSAL:

Records are maintained by the commanding officer or his designated representative for the period the individual is assigned to that organization. Records are updated annually or when family circumstances or other personal status changes. File follows member with each new assignment. Once affiliation with the Navy is complete, record is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief of Naval Personnel, Bureau of Naval Personnel (Pers-2WW), 2 Navy Annex, Washington, DC 20370–5001.

Record Holder: Commanding officer or designated representative of the naval activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer of the activity where assigned.

Request should include full name, Social Security Number, and dates assigned at that activity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer of the activity where assigned.

Request should include full name, Social Security Number, and dates assigned at that activity.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and contesting contents, and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–26528 Filed 10–16–96; 8:45 am]

BILLING CODE 5000–04–F

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 23, 1996. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 11:00 a.m. in the Joint Finance Committee Room on the first floor of Legislative Hall on Legislative Avenue in Dover, Delaware.

A briefing of the Delaware River Basin's Delaware legislators will be held at 10:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: Evesham Municipal Utilities Authority (D–93–38 CP).* An application for approval of a ground water withdrawal project to supply up to 29 million gallons (mg)/30 days of water to the applicant's distribution system from new Well No. 13 screened in the Mount Laurel Aquifer, and to increase the existing withdrawal limit of 136 mg/30 days from all wells to 149 mg/30 days. The project is located in Evesham Township, Burlington County, New Jersey. This hearing continues that of September 19, 1996.

2. *Resorts USA, Inc. D–96–15 CP.* An application for approval of a ground water withdrawal project to supply up to 2.42 mg/30 days of water to the applicant's Saw Creek Estates development from new Well No. 12, and to retain the existing withdrawal limit from all wells of 22.8 mg/30 days. The project is located in Lehman Township, Pike County, Pennsylvania.

3. *City of Coatesville Authority D–96–16 CP.* A project to withdraw a maximum of 4.0 million gallons per day (mgd) from the West Branch Brandywine Creek to serve the City of Coatesville and portions of its existing inter-basin system including nine adjacent municipalities in Chester County, Pennsylvania, most of which are within the Delaware River Basin, and portions of six townships in Lancaster County in the Susquehanna River Basin. Water will be withdrawn via the Hibernia Pump Station located approximately 2,000 feet downstream of the Hiberna Dam in West Caln Township, Chester County, Pennsylvania. Public water supply storage has been provided in Hibernia Reservoir and water will be released to Birch Run, a tributary of West Branch Brandywine Creek on which Hibernia Dam is located, to compensate for the project withdrawal during periods of low flow.

4. *Schnecksville North Sewer Company D–96–25.* A project to expand an existing sewage treatment plant (STP) from 48,000 gallons per day (gpd) to 75,000 gpd to serve the Schnecksville North residential and commercial development located on Schneck Road, North Whitehall Township, Lehigh County, Pennsylvania. The STP is situated approximately 2,000 feet west of the Pennsylvania Turnpike Extension and just off Schneck Road in North Whitehall Township. The STP will discharge to an unnamed tributary of Coplay Creek in the Lehigh River watershed after providing advanced secondary biological treatment with a modified extended aeration activated sludge process followed by tertiary filtration and disinfection by chlorine contact.

5. *Pine Valley Golf Club D–96–34.* A project to increase the surface water withdrawal at two on-site ponds (Intake No. 1 at Pond 3 and Intake No. 2 at Pond 5) and existing Well Nos. 2 and 3, from 12.5 mg/30 days to 32 mg/30 days.

Withdrawal from the wells will continue to be limited to 3 mg/30 days. Surface water is used for irrigation and the increase will serve expanded operations of the applicant's facility, including a ten-hole short course, turf nurseries and several practice areas. The golf course is situated along the headwaters of the North Branch of Big Timber Creek in Pine Valley Borough, Camden County, New Jersey.

6. *Connaught Laboratories, Inc. D–96–38.* An application for a new Total Dissolved Solids (TDS) determination for the applicant's existing 0.15 mgd wastewater treatment plant discharge to Swiftwater Creek, a tributary of Paradise Creek, in Pocono Township, Monroe County, Pennsylvania. The plant will continue to serve only the wastewaters generated by the vaccine production operations of Connaught Laboratories, Inc. and the adjacent Salk Institute, both in Pocono Township, Monroe County, Pennsylvania. As a result of continuing instream monitoring for background levels and the effects of TDS, and in order to meet future vaccine production demands, the applicant requests an allowable mass load increase from the 838 pounds/day monthly average to 2,250 pounds/day monthly average (from 670 mg/l to 1,800 mg/l).

7. *Schleicher Trailer Park D–96–39.* A project to construct a 100,000 gpd STP in two 50,000 gpd phases, to serve a 96-unit mobile home park in East Penn Township, Carbon County, Pennsylvania. The STP will provide secondary biological treatment utilizing the extended aeration activated sludge process, chlorine disinfection and dechlorination prior to discharge to an unnamed tributary of Lizard Creek, a tributary of the Lehigh River, approximately 1,000 feet south of Route 895 in East Penn Township, Carbon County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: October 7, 1996.

Susan M. Weisman,

Secretary.

[FR Doc. 96–26619 Filed 10–16–96; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

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 November 18, 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.

Gloria Parker,

Director, Information Resources Group.

Office of the Under Secretary

Type of Review: New.

Title: National ''What Works'' Evaluation for Adult English-as-a-second-language (ESL) Students.

Frequency: One time only.

Affected Public: Not-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,280 Burden Hours: 563.

Abstract: The Planning and Evaluation Service is conducting a five-year study to describe and identify effective ESL instruction for adults with limited literacy skills in six states: California, Florida, Illinois, New Jersey, New York and Texas. Phase 1 of the evaluation, for which clearance is being sought, is a descriptive study of all adult ESL providers in these states and selected sites providing adult ESL instruction. The information from the study will be used to develop descriptive profiles of the key features of adult ESL instruction, to help identify sites for Phase 2 of the study, and to obtain respondents' perception about ''what works'' for low-literate, adult ESL learners. Information will be collected from ESL administrators and instructors.

[FR Doc. 96–26563 Filed 10–16–96; 8:45 am]

BILLING CODE 4000–01–P

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Achievement Levels and Design and Methodology committees of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 6, 1996.

TIME: Achievement Levels Committee, 8:30 a.m.–12:30 p.m., (open); Design and Methodology Committee, 1:00–5:00 p.m. (open).

LOCATION: Wyndham Hotel, 123 10th Street, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Education Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On November 6, between the hours of 8:30 a.m. to 12:30 p.m. there will be a meeting of the Achievement Levels Committee. The Committee will be discussing early results of the 1996 science achievement level-setting, and proposed analysis and validation studies in science.

Also, on November 6, the Design and Methodology Committee will meet between the hours of 1:00 to 5:00 p.m. The purpose of this meeting is to discuss preliminary options for implementation under the new NAEP redesign, as well as, some proposed feasibility studies in specific technical areas related to the design of NAEP.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 325, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: October 11, 1996.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 96–26582 Filed 10–16–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under section 3507(a)(1)(D)of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE). Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response × proposed frequency of response per year × estimated number of likely respondents.)

DATES: Comments must be filed on or before November 18, 1996. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–14, 182, 782A/B/C, 821, 856, 863, 877, 878, and 888, ''Petroleum Marketing Program.''
2. Energy Information Administration, OMB No. 1905–0174, Revision, Mandatory.
3. The Petroleum Marketing Program surveys collect information on costs, sales prices, and distribution for crude oil and petroleum products. Data are published in petroleum publications and in multifuel reports.
4. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, distributors and importers.
5. 146,229 (1.2 hrs. × 7.6 responses per year × 16,069 respondents).

Statutory Authority: 44 U.S.C. 3506(a)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, October 10, 1996.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 96–26594 Filed 10–16–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM 97–1–120–001]

Carnegie Interstate Pipeline Company; Notice of Compliance Filing

October 10, 1996.

Take notice that on October 7, 1996, Carnegie Interstate Pipeline Company (CIPCO), in compliance with the letter order issued in the above-captioned proceeding on September 30, 1996, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet:

Substitute Ninth Revised Sheet No. 7

CIPCO proposed that the tariff sheet become effective on October 1, 1996

CIPCO states that since the time that CIPCO filed Ninth Revised Sheet No. 7 on August 30, 1996, CIPCO received and paid an annual charges bill for fiscal year 1996. To reflect the payment of that bill, and in compliance with the letter order accepting Ninth Revised Sheet No. 7, CIPCO filed a substitute sheet to

reflect the current Annual Charge Adjustment charge of $0.0020 per Mcf, adjusted of $0.0019 per Dth to reflect CIPCO's measurement basis.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protects must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26555 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–27–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 10, 1996.

Take notice that on October 8, 1996, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets, as listed in Appendix A to the filing, to be effective November 15, 1996.

CIG states it has tendered for filing tariff sheets to simplify its Form of Transportation Service Agreements. CIG alleges it is proposing to make the changes to reduce administrative burden, avoid confusion and to prepare for electronic contracting. CIG also states it is proposing to add language articulating its open access policies with respect to receipt and delivery taps on its system. CIG alleges similar language was in its transportation tariff before its Order No. 636 tariff, but was not brought forward, and CIG is correcting that oversight.

CIG states that copies of this filing were served upon all CIG transportation customers and State Commissions where CIG provides transportation services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26552 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–58–001]

Entergy Services, Inc.; Notice of Filing

October 10, 1996.

Take notice that on August 22, 1996, Entergy Services, Inc. (Entergy Services) acting as agent for Entergy Arkansas, Inc., tendered for filing a formula for treatment of the net lease costs for unused steel railcars and a protective order in compliance with the Commission's order of July 23, 1996, in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 21, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26540 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–291–004]

Mid Louisiana Gas Company; Notice of Tariff Filing

October 10, 1996.

Take notice that on October 7, 1996, Mid Louisiana Gas Company (MIDLA) tendered for filing to be included in its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of September 1, 1996.

First Revised Sheet No. 61

MIDLA asserts that the purpose of this filing is to correct a clerical error in the pagination of the indicated sheet.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, MIDLA respectfully requests waiver of Section 154.207, Notice requirements, as well as any other requirement of the Regulations in order to permit the tendered tariff sheet to become effective September 1, 1996, as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26548 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–402–001]

Mississippi River Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

October 10, 1996.

Take notice that on October 7, 1996, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of October 1, 1996:

Nineteenth Revised Sheet No. 5
Nineteenth Revised Sheet No. 6
Sixteenth Revised Sheet No. 7

MRT states that the purpose of this filing is to replace the tariff sheets, listed below, that were filed on September 30, 1996 due to mispagination, the misplacement of a decimal point (which changes the Maximum Rate on Sheet No. 6), and the addition of descriptive notes:

Substitute Eighteenth Revised Sheet No. 5
Substitute Eighteenth Revised Sheet No. 6
Substitute Fifteenth Revised Sheet No. 7

In all other respects, MRT states that this filing makes no other changes to the September 30, 1996 filing by MRT to its proposed Gas Supply Realignment Costs.

MRT states that a copy of its filing has been served on all its customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26550 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–25–001]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 10, 1996.

Take notice that on October 7, 1996, Mississippi River Transmission Corporation (MRT) tendered for filing to become part of its FERC Gas Tariff, Third, Revised Volume No. 1, the following Tariff sheets with a proposed effective date on November 1, 1996:

Twentieth Revised Sheet No. 5
Twentieth Revised Sheet No. 6
Seventeenth Revised Sheet No. 7
Substitute Seventh Revised Sheet No. 8

MRT states that the purpose of this filing is to replace the tariff sheets, listed below, that were filed on October 1, 1996 due to mispagination, the misplacement of a decimal place (which changes the Maximum Rate on Sheet No. 6), and the addition of descriptive notes:

Nineteenth Revised Sheet No. 5
Nineteenth Revised Sheet No. 6
Sixteenth Revised Sheet No. 7
Seventh Revised Sheet No. 8

In all other respects, MRT states that this filing makes no other changes to the October 1, 1996 filing by MRT to adjust the Fuel Use and Loss Percentages under MRT's Rate Schedules FTS, SCT, ITS, FSS, and ISS.

MRT states that a copy of its filing has been served on all its customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26556 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP97–1–001 and RM96–1–000]

National Fuel Gas Supply Corporation; Standards for Business Practices of Interstate Natural Gas Pipelines; Notice of Compliance Filing

October 10, 1996.

Take notice that on October 2, 1996, National Fuel Gas Supply Corporation (National Fuel) submitted corrected pro forma tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective April 1, 1997.

National Fuel states that this filing corrects minor numbering and typographic errors in its October 1, 1996, compliance filing, made in compliance with Order No. 587, Standards for Business Practices of Interstate Natural Gas Pipelines in Docket No. RM96–1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26551 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–18–000]

Northeast Utilities Service Company; Notice of Filing

October 10, 1996.

Take notice that on September 26, 1996, Northeast Utilities Service Company tendered for filing an amendment to its December 23, 1994, filing filed in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 October 21, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to be 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. 96–26536 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–3–000]

Northern States Power Company (Wisconsin), and Wisconsin Electric Power Company; Notice of Application

October 10, 1996.

Take notice that on October 1, 1996, Northern States Power Company, a Wisconsin corporation (NSP–W), located at P.O. Box 8, Eau Claire, WI 54702, and Wisconsin Electric Power Company (WEPCo), located at 231 W. Michigan Avenue, Milwaukee, WI 53201–2046, together referred to as Applications, filed an abbreviated application pursuant to Sections 7 (b), (c), and (e) of the Natural Gas Act requesting: (1) Authorization for NSP–W to abandon its Eau Claire, Wisconsin liquefied natural gas (LNG) facility and the certificated interstate LNG services provided at the facility; (2) issuance to NSP–W of a blanket certificate under Section 284.224 of the Federal Energy Regulatory Commission's Regulations; and (3) pre-authorization of the transfer of NSP–W's Section 284.224 blanket certificate to its corporate successor, WEPCo, all as more fully set forth in the application which is on file with the

Commission and open to public inspection.

NSP–W intends to merge with and into WEPCo, with WEPCo as the surviving company. The Eau Claire LNG facility will be transferred to WEPCo through the merger. Applicants are requesting blanket authority to operate the Eau Claire LNG facility as a Hinshaw facility; however, WEPCo is willing to accept Part 157 authorization to own and operate the Eau Claire LNG facility, if the Commission determines that such authorization is necessary. Authorization for the proposed merger of NSP–W and WEPCo is pending before the Commission in Docket No. EC95–16–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 31, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 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 service to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this 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 Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26542 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–4–000]

Northern States Power Company (Minnesota), and Northern Power Wisconsin Corporation; Notice of Application

October 10, 1996.

Take notice that on October 1, 1996, Northern States Power Company, a Minnesota corporation (NSP–M), and Northern Power Wisconsin Corporation (New NSP), together referred to as Applicants, both located at 414 Nicollet Mall, Minneapolis, MN 55401, filed an abbreviated application pursuant to Sections 7 (b), (c), and (e) of the Natural Gas Act requesting: (1) authorization for NSP–M to abandon its Wescott liquefield natural gas (LNG) facility and the certificated interstate LNG services provided at the facility; (2) issuance to NSP–M of a blanket certificate under Section 284.224 of the Federal Energy Regulatory Commission's Regulations; and (3) pre-authorization of the transfer of NSP–M's Section 284.224 blanket certificate to its corporate successor, New NSP, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NSP–M intends to merge with and into New NSP, with New NSP as the surviving company. The Wescott LNG facility will be transferred to New NSP through the merger. Applicants are requesting blanket authority to operate the Wescott LNG facility as a Hinshaw facility; however, New NSP is willing to accept Part 157 authorization to own and operate the Wescott LNG facility, if the Commission determines that such authorization is necessary. Authorization for the proposed merger of NSP–M and New NSP is pending before the Commission in Docket No. EC95–16–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 31, 1996, file with the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 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 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 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 Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26543 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–805–001]

Northwest Pipeline Corporation; Notice of Amendment to a Request Under Blanket Authorization

October 10, 1996.

Take notice that on October 4, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed an amendment to its September 20, 1996, prior notice request with the Commission in Docket No. CP96–805–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to partially abandon certain undersized facilities and to construct and operate replacement facilities at the Twin Falls meter station in Twin Falls County, Idaho, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Northwest originally proposed in Docket No. CP96–805–000 to (1) remove approximately 150 feet of 4-inch inlet piping, one 750,000 Btu per hour heater, one 4-inch filter, and four 4-inch regulators and appurtenances, and (2) install as replacement facilities approximately 150 feet of 6-inch inlet piping, one 1.5 MMBtu per hour heater, one 6-inch filter and four 4-inch control

valve type regulators and appurtenances at the Twin Falls meter station. Northwest stated that these upgrades would enable northwest to accommodate existing firm maximum daily delivery obligations to Intermountain Gas Company (Intermountain) and its affiliate IGI Resources, Inc. (IGI) and to accommodate Intermountain's request for additional delivery capacity and delivery pressure under existing firm service agreements. Northwest also stated that the maximum design capacity of the Twin Falls meter station would increase from approximately 18,400 Dth per day at 365 psig to approximately 31,000 Dth per day at 365 psig or 40,870 Dth per day at 500 psig. Northwest estimated that it would cost $234,900 to upgrade the Twin Falls meter station.

Northwest now proposes to install three 4-inch control valve type regulators and appurtenances, instead of the four originally proposed, at the Twin Falls meter station. Northwest states that it would be prudent to replace only three of the existing 4-inch regulators for operational flexibility and to accurately regulate the low flow of natural gas through the Twin Falls meter station during the summer months. Northwest states that all other pertinent information, including design capacities of the project, as stated in Northwest's prior notice request originally filed in Docket No. CP96–805–000 remain accurate as previously filed.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest if filed within the allowed time, 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 NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26541 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT–97–3–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 10, 1996.

Take notice that on October 7, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, to become effective November 7, 1996:

Original Sheet No. 1243–A

First Revised Sheet Nos. 1254, 1255, 1256 and 1257
Second Revised Sheet Nos. 1187, 1188, 1189, 1192, 1194, 1242, 1243, and 1253
Third Revised Sheet Nos. 1190, 1191 and 1192
Fourth Revised Sheet Nos. 1193 and 1224
Sixth Revised Sheet No. 1186
Seventh Revised Sheet No. 1186

Northwest states that the purpose of this filing is to revise Rate Schedule X–82 to reflect certain changes to various agreements related to gas storage at Jackson Prairie.

Any person desiring to be heard or protest this filing 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26545 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–115–000]

Sumas International Pipeline Inc.; Notice of Tariff Filing

October 10, 1996.

Take notice that on October 7, 1996, Sumas International Pipeline Inc. (SIPI), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheet, with a proposed effective date of October 1, 1996:

Sixth Revised Sheet No. 4

SIPI states that the above tariff sheet reflects the new ACA unit surcharge rate of $.0020 per Mcf which is equivalent to $.0020 per MMBtu on SIPI's system. As the new ACA rate is a decrease, SIPI has sought a waiver to allow the collection of the new rate effective 1 October 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make 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. 96–26554 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–345–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

October 10, 1996.

Take notice that on October 7, 1996, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective September 23, 1996:

Substitute Third Revised Sheet No. 319
Substitute Third Revised Sheet No. 319A

Tennessee states that it is filing the subject tariff sheets in compliance with the September 20, 1996 order of the Commission's in this docket. Tennessee states that the filing reflects the inclusion of the following clarifications to the unscheduled flow provision: (1) that a penalty applies to unscheduled flow at delivery points, equivalent to the penalty at receipt points, as well as a gas purchase obligation; (2) that a penalty applies when gas flows at a receipt or delivery point at which no nomination has been made for the flow or where Tennessee has scheduled no nomination(s) for such flow at all; and (3) that a responsible party is the Balancing Party where the receipt or delivery point is covered by a Balancing Agreement, or the point operator where

the receipt or delivery point is not covered by a Balancing Agreement.

Tennessee states that copies of the filing have been mailed to all participants in the proceeding and to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26549 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–8–000]

Wisconsin Electric Power Company; Notice of Application for Service Area Determination

October 10, 1996.

Take notice that on October 2, 1996, Wisconsin Electric Power Company (Wisconsin Electric), 231 West Michigan Street, P.O. Box 2046, Milwaukee, Wisconsin 53201–2046 filed an application pursuant to Section 7(f) of the Natural Gas Act (NGA), requesting a determination of a service area within which Wisconsin Electric may, without further Commission authorization, enlarge or expand its facilities. Wisconsin Electric also requests: (a) a finding that Wisconsin Electric qualifies as a local distribution company (LDC) for purposes of Section 311 of the Natural Gas Policy Act of 1978 (NGPA); (b) a waiver of the Commission's regulatory requirements, including reporting and accounting requirements ordinarily applicable to natural gas companies under the NGA and NGPA; and (c) such further relief as the Commission may deem appropriate, all as more fully described in the application which is on file with the Commission and open to public inspection.

Wisconsin Electric states that it is a public utility engaged in, among other things, the business of distributing natural gas to customers for residential, commercial, and industrial use. Wisconsin Electric requests a service area determination consisting of the towns of Boulder Junction, Conorver, Lac du Flambeau, Land O'Lakes, Manitowish Waters, Phelps, Plum Lake, Presque Isle, St. Germain, and Winchester in Vilas County, Wisconsin and Mercer in Iron County, Wisconsin and the right of way for a line from the Great Lakes Gas Transmission Limited Partnership pipeline in the town of Watersmeet, Michigan, to the Wisconsin-Michigan border at Land O'Lakes.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 31, 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 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the 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 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 Wisconsin Electric to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26544 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3138–000, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

October 9, 1996.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER96–3138–000]

Take notice that on September 30, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Federal Energy Sales, Inc. for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on August 31, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corporation

[Docket No. ER96–3139–000]

Take notice that on September 30, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Vastar Power Marketing, Inc. (Vastar). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Vastar and Vastar will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on October 1, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Vastar.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation

[Docket No. ER96–3140–000]

Take notice that on September 30, 1996, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Williams Energy Services Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas & Electric Corporation

[Docket No. ER96–3141–000]

Take notice that on September 30, 1996, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and PacifiCorp Power Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas & Electric Corporation

[Docket No. ER96–3142–000]

Take notice that on September 30, 1996, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Sonat Power Marketing L.P. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas & Electric Corporation

[Docket No. ER96–3143–000]

Take notice that on September 30, 1996, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and The Power Company of America, L.P. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER96–3144–000]

Take notice that on September 30, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a First Amendment to the Unit Exchange Agreement between NUSCO, on behalf of The Connecticut Light and Power Company and Western Massachusetts Electric Company, and Boston Edison Company.

NUSCO states that a copy of this filing has been mailed to Boston Edison Company.

NUSCO requests that this First Amendment become effective on November 1, 1996.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER96–3145–000]

Take notice that on September 30, 1996, Idaho Power Company filed a letter agreement amending the Agreement for the Sale and Purchase of Firm Energy between Idaho Power Company and Oregon Trail Electric Consumers Cooperative. Idaho Power requests an effective date of October 1, 1996.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. West Penn Power Company

[Docket No. ER96–3146–000]

Take notice that on September 30, 1996, West Penn Power Company, filed a Supplement No. 8 for proposed changes in its FERC Electric Tariff. The Pennsylvania Public Utility Commission has allowed West Penn to recover from its state jurisdictional customers the cost of West Penn's buy-out of a proposed coal-fired cogeneration facility and it has required West Penn to file a request with FERC to recover a total of approximately $930,000 of the amount from West Penn's FERC jurisdictional customers, which will be flowed through to the benefit of the state jurisdictional customers.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission and all parties of record.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Power Company

[Docket No. ER96–3147–000]

Take notice that on September 30, 1996, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and Southern Company Services, Inc. (Southern Company). Duke requests that the Agreement be made effective as of September 20, 1996.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Company

[Docket No. ER96–3148–000]

Take notice that on September 30, 1996, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and PanEnergy Power Services, Inc. (PanEnergy). Duke requests that the Agreement be made effective as of September 10, 1996.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER96–3149–000]

Take notice that on September 30, 1996, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and Enron Power Marketing, Inc. (Enron). Duke requests that the Agreement be made effective as of September 9, 1996.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Atlantic City Electric Company

[Docket No. ER96–3150–000]

Take notice that on September 30, 1996, Atlantic City Electric Company (ACE), tendered for filing an executed service agreement under which ACE will provide capacity and energy to TransCanada Power Corp. (TransCanada), Williams Energy Services Co. (Williams) and Vineland Municipal Electric Utility (Vineland) in accordance with the ACE wholesale power sales tariff.

ACE states that a copy of the filing has been served on TransCanada, Williams and Vineland.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Great Bay Power Corporation

[Docket No. ER96–3151–000]

Take notice that on September 30, 1996, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Connecticut Municipal Electric Energy Cooperative and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. Great Bay's revised Tariff for Short Term Sales was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective September 24, 1996.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. The Washington Water Power Company

[Docket No. ER96–3152–000]

Take notice that on September 30, 1996, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, a Construction Agreement between WWP and the Bonneville Power Administration. WWP requests an effective date of December 1, 1996. A copy of this filing has been served upon Bonneville.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Power Company

[Docket No. ER96–3153–000]

Take notice that on September 30, 1996, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and Carolina Power & Light Company (CP&L). Duke requests that the Agreement be made effective as of September 12, 1996.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Power Company

[Docket No. ER96–3154–000]

Take notice that on September 30, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Aquila Power Corporation (Aquila). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Aquila non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of September 5, 1996.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. South Carolina Electric & Gas Company

[Docket No. ER96–3155–000]

Take notice that on September 30, 1996, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement, dated September 24, 1996, establishing Industrial Energy Applications, Inc. (IEA) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one-day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon IEA and the South Carolina Public Service Commission.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company

[Docket No. ER96–3156–000]

Take notice that on September 30, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and El Paso Energy Marketing Company under Rate GSS.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Northwestern Public Service Company

[Docket No. ES97–1–000]

Take notice that on October 4, 1996, Northwestern Public Service Company (Northwestern) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue warrants to purchase 725,000 shares of Northwestern's Common Stock, par value $3.5 per share. Northwestern also requests an exemption from the Commission's competitive bidding and negotiated placement requirements. Northwestern plans to issue the warrants as part of the consideration for the purchase of propane distribution systems.

Comment date: November 1, 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. 96–26539 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–P

Notice of Transfer of License

October 10, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No: 2585–001.

c. Date Filed: October 1, 1996.

d. Applicant: Duke Power Company, Northbrook Carolina Hydro, L.L.C.

e. Name of Project: Idols Hydroelectric Project.

f. Location: On the Yadkin River in Forsyth County, North Carolina, near the City of Winston-Salem.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contacts:

Timothy L. Huffman, Senior Engineer, Duke Power Company—EC12V, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–5185.

Mark Sundquist, President, Northbrook Carolina Hydro, L.L.C., 225 W. Wacker Driver, Suite 2330, Chicago, IL 60606, (312) 553–2136.

i. FERC Contact: David W. Cagnon, (202) 219–2693.

j. Comment Date: November 6, 1996.

k. Description of Transfer: The Transfer of License is being sought in connection with the acquisition of the project by Northbrook Carolina Hydro, L.L.C. from Duke Power Company.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 818 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26546 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Transfer of License

October 10, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 2607–006.

c. Date Filed: October 1, 1996.

d. Applicant: Duke Power Company, Northbrook Carolina Hydro, L.L.C.

e. Name of Project: Spencer Mountain Hydroelectric Project.

f. Location: On the South Fork Catawba River, in Gaston County, North Carolina, near the Town of Gastonia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contacts:

Timothy L. Huffman, Senior Engineer, Duke Power Company—EC12V, P.O. Box 10065, Charlotte, NC 28201–1006, (704) 382–5185.

Mark Sundquist, President, Northbrook Carolina Hydro, L.L.C., 225 W. Wacker Drive, Suite 2330, Chicago, IL 60606, (312) 553–2136.

i. FERC Contact: David W. Cagnon, (202) 219–2693.

j. Comment Date: November 6, 1996.

k. Description of Transfer: The Transfer of License is being sought in connection with the acquisition of the project by Northbrook Carolina Hydro, L.L.C. from Duke Power Company.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26547 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–255–001, et al.]

Trunkline LNG Company, et al.; Natural Gas Certificate Filings

October 8, 1996.

Take notice that the following filings have been made with the Commission:

1. Trunkline LNG Company

[Docket No. CP96–255–001]

Take notice that on October 3, 1996, Trunkline LNG Company (Applicant), P.O. Box 1642, Houston, Texas 77251–1642 filed in Docket No. CP96–255–001 an abbreviated application for amended abandonment authorization pursuant to Section 7 (b) of the Natural Gas Act, as amended, and Part 157 of the Commission's Regulations thereunder. Applicant is requesting amended authority to permit: (1) The abandonment of Unit 2204–JB by sale to Kvaerner Energy a. s. (Kvaerner), and (2) the abandonment of a 50 percent interest in Unit 2204–JA (8 megawatts) to PanEnergy Lake Charles Generation,

Inc. (PELCG), all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection.

Applicant states that it would retain a 50 percent interest in Unit 2204–JA for use as a source of back-up power and to serve its peak power requirements for ship unloading at the terminal, which is equivalent to the 8 megawatts of capacity for the combined units approved by the Commission's May 15, 1996, Order Approving Abandonment. Applicant asserts that the proposed amended authority will facilitate its continued use of up to 8 megawatts of electric power as a back-up power source through its retention of a 50 percent interest in Unit 2204–JA. Applicant further asserts that approval of the requested authority will also provide PELCG with the ability to run Unit 2204–JA at a higher load than Applicant, which will result in a more efficient use of that asset and the avoidance of a low load factor operation which is detrimental to the unit's service life.

Comment date: October 29, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Michigan Gas Storage Company

[Docket No. CP97–2–000]

Take notice that on October 1, 1996, Michigan Gas Storage Company (MGSCo), 212 West Michigan Avenue, Jackson, Michigan 49201, filed, in Docket No. CP97–2–000, an application pursuant to Section 7(c) of the Natural Gas Act for a Certificate of Public Convenience and Necessity establishing (i) annual cyclic storage capacity, and (ii) expected deliverability for each of MGSCo's previously certificated underground gas storage fields, all as more fully set forth in the application on file with the Commission and open to public inspection.

Comment date: October 29, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation; ANR Pipeline Company

[Docket No. CP97–5–000]

Take notice that on October 2, 1996, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310 and ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–5–000 a joint application pursuant to Section 7(b) and Section 7(c) of the Natural Gas Act for permission and approval to abandon by sale of an undivided 50 percent interest by ANR and the acquisition of such undivided 50 percent interest by Texas Eastern in ANR's Springboro Meter Station, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that the Springboro Meter Station consists of a 10-inch tap on the 36-inch Lebanon Pipeline jointly owned by Texas Eastern and ANR, two 8-inch turbine meters and appurtenant facilities. It is stated that the Springboro Meter Station was originally constructed by ANR pursuant to Section 311 of the Natural Gas Policy Act in order to make deliveries of natural gas to Cincinnati Gas & Electric (CG&E) for resale. It is further stated that in Docket No. CP93–86–000, ANR obtained certificate authority to operate the Springboro Meter Station under Section 7(c) of the Natural Gas Act.

ANR states that it has agreed to the sale of an undivided 50 percent interest and Texas Eastern states that it has agreed to acquire such undivided 50 percent interest in the Springboro Meter Station. It is stated that Texas Eastern and ANR will each utilize the Springboro Meter Station as a delivery point on the Lebanon Pipeline. ANR states that it will continue to operate and maintain the Springboro Meter Station. Texas Eastern states that it will provide up to 50,000 dekatherms per day of firm transportation service to CG&E pursuant to Texas Eastern's Part 284 blanket transportation certificate and Rate Schedule LLFT included in Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Comment date: October 29, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP97–10–000]

Take notice that on October 3, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP97–10–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, modify and operate certain facilities located in Sebastian and Logan Counties Arkansas under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, NGT proposes to operate an existing 2-inch delivery tap on NGT's Line ''O'' (NGT's Witcherville delivery point) in Section 36, Township 6 North, Range 31 West, Sebastian County, Arkansas, originally installed in 1990 to provide transportation services solely under Section 311 of the Natural Gas Policy Act of 1978 (NGPA) to Arkansas Oklahoma Gas Company (AOG) under Subpart G of Part 284 of the Commission's Regulations. NGT states that will deliver approximately 20,000 MMBtu per day and approximately 3,600,000 MMBtu annually to AOG pursuant to a firm transportation agreement. NGT also states that its 2-inch L-Shape meter station installed under Section 311 of the NGPA would be abandoned and reported on its 1996 annual report, and that AOG would install a 6-inch meter run, regulators and approximately 50 feet of 4-inch-diameter pipeline from their meter station to NGT's 2-inch tap.

In addition, NGT proposes to construct and operate a 3-inch tap and first-cut regulator (NGT's Chismville delivery point) on NGT's Line ''O'' in Section 15, Township 6 North, Range 28 West, Logan County, Arkansas to deliver gas to AOG. The estimated volumes to be delivered to this delivery tap pursuant to a firm transportation agreement between NGT and AOG are approximately 12,000 MMBtu on a peak day and 2,160,000 MMBtu annually. The estimated cost of construction of the tap and first-cut regulator is $2,250 and AOG agrees to reimburse NGT for all construction costs. NGT also states that AOG will install a 4-inch meter run, with regulators and electronic flow measurement equipment. NGT states that AOG will own and operate the metering facilities and NGT will own and operate the tap.

NGT states that it will transport gas to AOG and provide service under its tariff, that the volumes delivered are within AOG's certificated entitlement and NGT's tariff does not prohibit the addition of new delivery points. NGT states that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Comment date: November 22, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Florida Gas Transmission Company; Tennessee Gas Pipeline Company

[Docket No. CP97–11–000]

Take notice that on October 3, 1996, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188 and Tennessee Gas Pipeline Company (TGP), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP97–11–000 a joint application pursuant to Section 7(b) and 7(c) of the Natural Gas Act for

permission and approval for FGT to abandon, by assignment to TGP, FGT's ownership interest in certain jointly owned facilities and for TGP to acquire and own, FGT's interest in the jointly owned facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, FGT proposes to abandon by transfer to TGP, and TGP proposes to acquire and own, FGT's interest in certain jointly-owned Sabine Pass Phase I Facilities which were constructed pursuant to orders issued June 10, 1981, and October 26, 1981, in Docket No. CP80–481. FGT and TGP state that by letter agreement dated April 16, 1996, FGT and TGP mutually agreed for FGT to assign to TGP One Hundred Percent of FGT's ownership in the Sabine Pass Phase I Facilities.

FGT and TGP further state that in consideration for the transfer, TGP agrees to waive collection from FGT of: (1) Any capital related amounts from January 1, 1995, through the transfer of the Phase I Facilities, (2) certain disputed amounts for Administration and General Loading Overhead, and (3) all future O&M expenses related to the Phase I Facilities incurred following the transfer of the facilities.

Comment date: October 29, 1996, in accordance with Standard Paragraph F at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP97–13–000]

Take notice that on October 4, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP97–13–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to uprate approximately one mile of the Jewell 2-inch pipeline located in Jewell County, Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, WNG proposes to uprate the Jewell line by increasing the maximum allowable operating pressure (MAOP) of the line from 133 psig to 433 psig. WNG estimates the uprate to cost $5,000, and that such uprate would improve the efficiency of the system and eliminate the need for a high maintenance high pressure regulator setting.

Comment date: October 29, 1996, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26537 Filed 10–16–96; 8:45 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of December 25 Through December 29, 1995

During the week of December 25, through December 29, 1995, the decision and order summarized below was issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy.

Copies of the full text of the decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: October 7, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 952

Week of December 25 through December 29, 1995

Personnel Security Hearing

Albuquerque Operations Office, 12/28/95, VSO–0051

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 CFR Part 710. The individual tested positive for cannabinoids on a recent drug test and also admitted to having used marijuana three times in 1974, despite having answered the drug use question on a 1988 Personnel Security Questionnaire in the negative. After considering the Individual's testimony and the record, the Hearing Officer concluded that the Individual had shown mitigating circumstances with respect to the DOE's Criterion F allegation of falsification. In considering the Individual's passive inhalation defense to the Criterion K allegations based on the positive drug test, the Hearing Officer found that while side stream smoke under realistic conditions could result in a positive drug test, the evidence did not support such a finding in this case. Accordingly, the Hearing Officer found that Criterion K had been properly invoked by DOE as a basis for revoking the Individual's security clearance and that, because of the

Individual's denial of drug use, there was no basis upon which to mitigate that finding. Because the DOE's Criterion L allegation was dependent on an affirmative finding with respect to the Criterion K allegation concerning 1995 drug use, the Hearing Officer found that it too served as a basis for revoking the Individual's clearance. The Hearing Officer, therefore, concluded that the Individual's access authorization should not be restored.

Refund Application

The Office of Hearings and Appeals issued the following Decision and Order 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:

Township of Ocean	RF272–67847	12/28/95

[FR Doc. 96–26595 Filed 10–16–96; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of October 30 Through November 3, 1995

During the week of October 30 through November 3 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: October 7, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 944

Week of October 30 Through November 3, 1995

Appeal

William M. Arkin, 10/30/95 VFA–0089

William M. Arkin filed an Appeal under the Freedom of Information Act of a determination issued to him by the Albuquerque Operations Office. Arkin had requested information concerning ''blinding, dazzling, or stunning laser related counter electro-optics weapons.'' On Appeal, Arkin took issue with the DOE's claim that no responsive documents existed, noting that several articles concerning DOE's activities in this area had appeared in the media. The DOE found that Albuquerque had failed to adequately respond to Arkin's request and, therefore, remanded the matter for further action.

Personnel Security Hearing

Rocky Flats Field Office, 11/1/95 VSO–0043

A Hearing Officer of the Office of Hearings and Appeals issued an opinion concerning the continued eligibility of an individual for access authorization under 10 C.F.R. Part 710. The Hearing Officer found that the derogatory information presented with respect to the individual's alleged marijuana use was insufficient to raise a substantial doubt concerning the veracity of the individual's repeated denials that he ever used illegal drugs. However, the Hearing Officer found that the information presented regarding the individual's alcohol abuse was sufficient to support a denial of access authorization pursuant to 10 C.F.R. § 710.8(j). The Hearing Officer also found that the individual failed to present sufficient evidence of rehabilitation or reformation to mitigate this derogatory information. Accordingly, the Hearing Officer concluded that the individual's access authorization should not be restored.

Requests for Exception

C&B Warehouse, 11/3/95 VEE–0008

C&B Warehouse filed an Application for Exception from the requirement that it file Form EIA–782B, the ''Reseller/Retailer's Monthly Petroleum Product Sales Report.'' The DOE found that the firm was not affected by the reporting requirement in a manner different from other similar firms and, consequently, was not experiencing a special hardship, inequity, or unfair distribution of burdens. Accordingly, the firm's Application for Exception was denied.

Dixie Gas & Oil Co., 11/1/95 VEE–0009

Dixie Gas & Oil Company filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' The DOE found that the firm was suffering temporary hardship related to upgrading its computer system. Therefore, the firm was granted an exception relieving it of the requirement to submit Form EIA–782B between October 1995 and January 1996.

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:

Beaufort Transfer, Inc. et al	RF272–77717	11/03/95
Crude Oil Supple Ref Dist	RB272–57	11/01/95
Crude Oil Supple Refund Dist	RB272–48	10/31/95
Gulf Oil Corporation/Jack's Gulf Service et al	RF300–21403	11/03/95
Gulf Oil Corporation/Perfect Fuel Co.	RF300–16945	11/01/95
Wiggins Grocery	RF300–16964	.....
Wiggins Gulf Service	RF300–16965	.....
H&L Pippin Farms et al	RK272–1253	11/01/95
Hirsch Realty Management Corp.	RF272–78605	11/01/95
Zumo Management	RF272–78616	.....
Iola E. Williams et al	RK272–1501	11/01/95
Laurel Cooperative Assn. et al	RF272–95101	10/31/95
Northern Neck Transfer, Inc.	RF272–95281	10/31/95
Schnuck Markets, Inc.	RC272–324	11/03/95

Texaco Inc./Pecan Shoppe of Plant City	RF321–16233	11/01/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Branch Motor Express	RF300–12741
Cape Smythe Air Service	RF272–98003
Dolcito Quarry Company, Inc.	RK272–00246
Netumar Lines	RF272–97896
S.F. Transport, Inc.	RF272–97309
Terminal Transportation, Inc.	RF272–97334
The National Security Archive	VFA–0074
Western Electric Company	RF300–21568
York Shipping Corporation	RF272–97919
Center Equipment Company	RF272–96155
El Toro Express	RF272–77988
James J. Williams Trucking Co.	RF272–97883
Johnny Bowen Gulf Station #1	RF300–21710
New York State Electric & Gas	RF300–21566
Redi-Froz Dist. Co.	RF272–97821

[FR Doc. 96–26596 Filed 10–16–96; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of September 11 Through September 15, 1995

During the week of September 11 through September 15, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: October 7, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 937

Week of September 11 Through September 15, 1995

Appeals

Jeffrey R. Leist, 9/14/95, VFA–0069

Jeffrey R. Leist filed an Appeal from a determination issued to him by the Manager of the Ohio Field Office partially denying a request for information filed by him pursuant to the Freedom of Information Act. The Manager had released copies of responsive documents, but had redacted all personal identifying information from them under Exemption 6. In considering the Appeal, the DOE determined that the Manager inadvertently redacted Mr. Leist's own name from one of the responsive documents. Accordingly, the DOE directed the Manager to send to Mr. Leist a copy of this document, without a redaction of his name. Since the DOE determined that Exemption 6 was otherwise properly applied to the responsive documents, the Appeal was denied in all other respects.

Jeffrey R. Leist, 9/12/95, VFA–0071

Jeffrey R. Leist filed an Appeal from a determination issued to him by the Ohio Field Office partially denying a request for information filed by him pursuant to the Freedom of Information Act. Specifically, the Manager released copies of responsive documents, but could not locate a letter Mr. Leist alleged was sent to him. In considering the Appeal, the DOE confirmed the existence of the responsive letter and remanded the case to the Manager to either release a copy of the letter or provide a detailed explanation as to why the letter is exempt from public disclosure.

State of Michigan, 9/15/95, VFA–0066

The State of Michigan, filed an Appeal from a determination issued by the Freedom of Information and Privacy Act Division in response to a request it submitted under the Freedom of Information Act (FOIA). Michigan sought documents concerning the 1992–93 Presidential transition members and Cities Service Oil and Gas Corporation. It contended that additional responsive documents must exist. In considering the Appeal, the DOE found that the FOIA Division performed an adequate search for responsive documents. Accordingly, the Appeal was denied.

Personnel Security Hearing

Oak Ridge Operations Office, 9/15/95, VSO–0035

A 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 C.F.R. Part 710. The Hearing Officer found that: (i) the individual used cocaine and marijuana in the past and used cocaine after assuring the DOE in writing that he would not have any involvement with illegal drugs; (ii) the individual deliberately provided false information to the DOE on three separate occasions; (iii) the acts of the individual tend to show that the individual may use illegal drugs in the future and that the individual is not honest, reliable, or trustworthy; and (iv) the DOE's security concerns regarding these behaviors were not overcome by the evidence mitigating the derogatory information underlying the DOE's charges. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Refund Applications

Atlantic Richfield Company/Nicot Oils Co., Inc., 9/14/95, RF304–4883

Nicot Oils Co., Inc. was denied a refund in the Atlantic Richfield Company special refund proceeding. After an investigation by the Inspector General's office, Mr. Nick Schnettler, the owner of Nicot, pled guilty to mail fraud regarding 16 applications he filed in the ARCO and Mobil Oil Company special refund proceedings. Because special refund proceedings are equitable proceedings and thus are subject to the equitable stricture against ''unclean hands,'' the Nicot Refund Application was denied.

Spag Realty Associates, et al., 9/11/95, RC272–00298, et al.

A Supplemental Order was issued requiring Spag Realty Associates and three related firms to repay $9,909 to the DOE. These firms received duplicate refunds in the crude oil refund proceeding. The first set of applications was filed on the companies' behalf by Recovery Resources, a private filing service. The second set of applications was filed by the companies' accountant. Both sets of applications were granted based on the purchase volume figures provided in the applications. In the Supplemental Order, the DOE determined that the applications filed by Recovery Resources contained inaccurate and inflated purchase volume claims, and that the four firms were not entitled to refunds based on these purchase volume figures. The DOE also determined that the applications filed by the companies' accountant contained accurate purchase volume claims. The applicants would, therefore, have been eligible for supplemental crude oil refunds based on these applications. The DOE determined that the amount the firms will be required to remit should be reduced by the amount of the supplemental refunds they would have received. The Order also holds Recovery Resources jointly responsible for the repayment of the refunds.

Texaco Inc./Ryder Systems, Inc., 9/15/95, RF321–171

A Motion for Reconsideration filed by Ryder System, Inc., was granted. Ryder had previously received the maximum refund available under the retailer/reseller medium-range presumption of injury. Ryder requested that it be permitted to benefit from the end-user presumption of injury by receiving an additional refund for products that it consumed rather than resold. The DOE determined that Ryder was entitled to an additional refund based only on those consumed gallons purchased by Ryder-owned companies whose operations were unrelated to Ryder's renting and leasing operations.

Texaco, Inc./Self Enterprises, 9/15/95, RR321–192

Self Enterprises filed a Motion for Reconsideration in the Texaco Inc. special refund proceeding. Self had been granted a refund of $10,000 in the Texaco proceeding under the medium-range presumption of injury for the purchases of 13 outlets. See Texaco Inc./Tabba Oil, 23 DOE ❙ 85,192 (1994). In its Motion, Self requested that Tabba be vacated in order that it may attempt to make an injury showing, or alternatively, that it be modified to include purchases of more gallons than were originally claimed. The DOE declined to consider any of these requests. Self had been put on notice by the DOE of the proposed disposition of its case, the time period to make objections to that disposition, and the February 28, 1994 deadline for filing applications in the Texaco proceeding, yet waited one and one-half years past that deadline to make its submission. The DOE determined that this delay was not excusable. Therefore, the Motion for Reconsideration was dismissed.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supplemental Refund Distribution	RB272–40	09/11/95
Doe Run Company et al	RK272–151	09/12/95
Interstate Mushroom Co. et al	RF272–89291	09/11/95
Liberty Trucking Company	RF272–78467	09/14/95
Navistar Internation Transportation Corp.	RF272–77726	09/15/95
Nuclear Fuel Services, Inc.	RF272–91052	09/12/95
Spring Valley Farms of AL, Inc., et al	RF272–77533	09/14/95
Texaco Inc./Larmac Texaco, Inc.	RF321–20639	09/15/95
Texaco Service Station	RF321–20745	.....
Texaco Inc./PEH Texaco	RR321–190	09/15/95
Princeton Circle	RR321–191	.....
Texaco Inc./Temple & Temple Excavating & Paving, Inc.	RF321–20456	09/14/95
Texaco Inc./Texaco #8/Self Enterprises	RF321–18534	09/15/95
Theodor Pick et al	RK272–74	09/15/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Gulf Coast Petroleum, Inc.	RF321–20380
Karnack Chemical Corporation	RF272–78133
Laverne's Oil	RF272–89946
Margaret Klunk VFA–0070.	
Newton County, MS	RF300–21591
Southern Disposal, Inc.	RF272–99102
Southern Disposal, Inc.	RF272–95216
Virginia Concrete Company	RF272–78022

[FR Doc. 96–26597 Filed 10–16–96; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of July 10 Through July 14, 1995

During the week of July 10 through July 14, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: October 7, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 928

Week of July 10 Through July 14, 1995

Appeals

Albuquerque Journal, 7/11/95, LFA–0182

The Albuquerque Journal filed an appeal from a denial by the Office of Arms Control and Nonproliferation Technology Support of a request for information that it submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the initial determination did not consider all responsive documents. Accordingly, the Appeal was granted in part and the matter was remanded for a new determination regarding additional responsive material.

Murray, Jacobs & Abel, 7/11/95, VFA–0050

Murray, Jacobs & Abel appealed the Inspector General's denial of its request for documents pertaining to an ongoing investigation into allegations that Technology Management Services, Inc., a government contractor, engaged in improper activities. The Office of the Inspector General had withheld the information under Exemption 7(A). In considering the Appeal, the DOE found that the OIG's determination did not contain sufficient specificity in its explanation for withholding the requested documents under Exemption 7(A) and the case was remanded for a new determination.

Interlocutory Order

Benton County, Washington, 7/11/95, VPZ-0002

Benton County, Washington filed a Motion to Strike certain portions of a post-hearing brief filed by the Department of Energy DOE Richland Operations Office (DOE/RL). The contested portions of the brief contained citations to the discovery depositions of four major Benton County witnesses who testified during the January 1995 hearing on the county's appeal of the amount of Payments-Equal-To-Taxes (PETT) it would receive under the Nuclear Waste Policy Act of 1982 for site characterization at the Basalt Wast Isolation project on the Hanford reservation. DOE/RL alleged that all depositions were a part of the evidentiary record of the proceeding, and requested that the deposition of the Benton County Assessor be considered that of a party pursuant to Fed. R. Civ. P. 32(a)(2). OHA granted the motion in part. The parties held supplemental telephone hearings to properly enter the contested references into the record. DOE/RL was given an opportunity to submit an amended post-hearing brief to incorporate the new materials generated in the supplemental telephone hearings. OHA ruled that the discovery depositions at issue were not part of the evidentiary record, and denied the requests to admit the Assessor's deposition under Rule 32.

Refund Applications

Allegheny Power Service Corporation, 7/14/95, RF272–97910

The DOE issued a Decision and Order concerning an Application for Refund in the Subpart V crude oil overcharge refund proceeding filed by the Allegheny Power Service Corporation. The DOE determined that the Allegheny Power Service Corporation was not entitled to a crude oil refund since it had filed a Utilities Escrow Settlement Claim Form and Waiver, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Texaco Inc./Jimco Truck Plaza, 7/14/95, RF321–21065

The Department of Energy granted a refund to Jimco Truck Plaza in the Texaco refund proceeding despite the fact that Jimco did not inform the OHA that its bankruptcy proceeding was still pending at the time that the application was filed. The DOE determined that Mildred Pumphrey, who signed the application, did not know at that time that the bankruptcy proceeding involving her late husband's company was still pending. Furthermore, it appeared from the record that all of Jimco's creditors had been satisfied. The Decision also concerned the proper distribution of the refund among the members of the Pumphrey family.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/B & N Arco et al	RF304–13748	07/11/95
C.M. Caraway & Sons, Inc. et al	RF272–94129	07/10/95
Columbia LNG Corporation	RF272–97572	07/11/95
Crude Oil Supplemental Refund Distribution	RB272–11	07/10/95
Crude Oil Supplemental Refund Distribution	RB272–7	07/11/95
Crude Oil Supplemental Refund Distribution	RB272–15	07/14/95
Crude Oil Supplemental Refund Distribution	RB272–22	07/14/95
Crude Oil Supplemntaal Refund Distribution	RB272–13	07/14/95
Farmers Union Oil Co. et al	RF272–86748	07/11/95
Gardner Asphalt Corporation	RF272–94635	07/10/95
Texaco Inc./Clem's Texaco Gasoline Mart & Service et al	RF321–20283	07/14/95
Texaco Inc./Cullum's Texaco	RF321–21076	07/14/95
Texaco Inc./Energy Delivery Systems, Inc	RF321–10872	07/14/95
Texfi Industries, Inc. et al	RF272–77338	07/14/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Ideal Fuel Company	RF321–14143
Johnston Burane Company	RF304–14155
K-Mechanical Services, Inc.	RF272–94211
Munia A. Malik	VFA–0057
Olmsted County, MN	RF272–89078
R and G Services Ltd.	RF321–14154
Suffolk County, NY	RF272–86594

[FR Doc. 96–26598 Filed 10–16–96; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of February 19 Through February 23, 1996

During the week of February 19 through February 23, 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, 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: October 7, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 960

Week of February 19 Through February 23, 1996

Appeals

Archie M. LeGrand, Jr., 2/20/96, VFA–0120

Archie M. LeGrand, Jr., filed an Appeal from a determination by the Department of Energy's FOIA/Privacy Act Division (FOIA Division). Mr. LeGrand sought records of investigations conducted regarding his suitability for a security clearance. The FOIA Division stated that a search of the records in the DOE's Office of Safeguards and Security and the Savannah River Operations Office was conducted and no records were found responsive to the request. In his Appeal, Mr. LeGrand argued that the DOE conducted an inadequate search for records. In considering the Appeal, the DOE found that because Mr. LeGrand's employment at the Savannah River Site ended over 25 years ago, any security clearance records maintained regarding Mr. LeGrand would no longer exist. Under these circumstances, the DOE concluded that a search of a microfiche index of all DOE and DOE contractor employees who had held security clearances in the past was an adequate search reasonably calculated to discover documents responsive to Mr. LeGrand's request. Accordingly, the Appeal was denied.

Eugene Maples, 2/23/96, VFA–0122

Eugene Maples (Maples) filed an Appeal from a determination issued to him by the Department of Energy's Office of the Inspector General (OIG) in response to a request for information submitted by him under the Freedom of Information Act (FOIA). Maples sought a copy of a final report issued by the OIG which summarized an investigation into the misuse of oil overcharge funds by the State of South Carolina conducted by the Savannah River Site during 1993–94. The OIG issued a determination denying Maples request in its entirety pursuant to Exemption 7(A). The OIG stated that it had not reached a final resolution of the investigation; therefore, release could prematurely disclose enforcement efforts and interfere with its ongoing investigation. In considering the Appeal, the Office of Hearings and Appeals found that release of the final report could interfere with the investigation. The Office of Hearings and Appeals concluded that the OIG properly applied Exemption 7(A) to the responsive document. Therefore, the Department of Energy denied Maples' Appeal.

Refund Applications

George, Victor & Bernard Didinsky, 2/21/96, RJ272–6

This Supplemental Order modifies a supplemental crude oil overcharge refund granted to Fallsburg Bottling Works, Inc. The applicant submitted evidence that the corporation had been dissolved in 1988 and requested that the supplemental refund be issued to the successor partnership that had been formed by the three equal shareholders of the corporation. The request was approved and the DOE directed that a new refund check be issued to the partnership.

Texaco Inc./Chain Oil Co., 2/21/96, RR321–194

The Department of Energy issued a Decision and Order denying a Motion for Reconsideration filed by Chain Oil Co. (Chain) and its owner, Donald Foster in the Texaco refund proceeding. The Motion was denied because Mr. Foster had again failed to demonstrate that his acquisition of Chain included Chain's right to the refund.

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.

Bemis Company, Inc.	RF272–17760 RF272–20188 RD272–17760 RD272–20188	02/21/96
Davis Trucking Company et al	RK272–2252	02/21/96
Syar Industries, Inc. et al	RF272–73595	02/21/96

Syar Industries, Inc. RD272–73599

Dismissals

The following submissions were dismissed:

Name	Case No.
Richland Operations Office	VSO–0053

[FR Doc. 96–26599 Filed 10–16–96; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42188; FRL–5571–2]

Endocrine Disruptors; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of public meeting.

SUMMARY: EPA is holding a public meeting with interested stakeholder groups to assist the Agency in forming a committee under the provisions of the Federal Advisory Committee Act (FACA) to provide advice on the screening and testing of chemicals and pesticides for their potential to disrupt endocrine function in humans and wildlife. This is the second of such meetings. The first meeting was held May 15–16, 1996, in Washington DC. Persons who attended the first meeting or placed their names on a list to be kept informed of further developments will be notified of this meeting by letter, and will receive additional information regarding the formation of the committee and nominees for committee membership.

DATES: The public meeting will be held on October 31 and November 1, 1996, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Washington, DC, at the Sheraton City Centre Hotel, 1143 New Hampshire Ave NW (3 blocks NE of the Foggy Bottom Metro station at New Hampshire Ave and M St. NW). Telephone: 202–775–0800.

FOR FURTHER INFORMATION CONTACT: Persons who want to attend this meeting should register with Donald Walker no later than October 24, 1996. Reservations will be accepted on a first-come basis. Persons with reservations should arrive at least 10 minutes prior to the meeting to ensure that their seat is not given to someone on the waiting list. Persons who do not have a reservation will be admitted to the meeting only if space is available.

To register or to obtain additional information (such as the summary of the May 15 and 16 meeting) please contact: Donald Walker, TASCON Corp; telephone: (301) 907–3844 x 247; fax: (301) 907–9655; e-mail: dwalker@tascon.com. For technical information, contact Anthony Maciorowski (202) 260–3048, e-mail: maciorowski.anthony@epamail.epa.gov or Gary Timm (202) 260–1859, e-mail: timm.gary@epamail.epa.gov at EPA.

SUPPLEMENTARY INFORMATION: A growing body of scientific research indicates that many man-made chemicals may interfere with the normal functioning of human and wildlife endocrine systems. These endocrine disruptors may cause a variety of problems with development, behavior, and reproduction. Although many chemicals have undergone extensive toxicological testing, it is unclear whether this testing has been adequate to detect the potential for these chemicals to disrupt endocrine functioning or what additional testing is needed for EPA to assess and characterize risk. Notwithstanding recognition that the scientific knowledge related to endocrine disruptors is still evolving, there is widespread agreement that the development of a screening and testing program is appropriate. Recent legislation (reauthorization of the Safe Drinking Water Act and passage of the Food Quality Protection Act) has mandated that such a screening and testing program be developed by EPA. Further, underlying authority for EPA to consider implementation of such a program is found in the existing Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Toxic Substances Control Act (TSCA).

EPA's Office of Prevention, Pesticides and Toxic Substances is taking the lead for EPA on endocrine disruption screening and testing issues. EPA began its efforts to develop a screening and testing strategy by obtaining the views of stakeholders at a meeting on May 15–16, 1996 (61 FR 20814, May 8, 1996) (FRL–5369–8). At the May stakeholder's meeting participants generally agreed that government, industry, academia and public interest groups should work collaboratively to develop a screening and testing strategy. EPA has concluded that a FACA chartered committee would be the best means of providing assistance in developing such a strategy and proposes to establish the Endocrine Disrupter Screening and Testing Advisory Committee (EDSTAC). The purpose of EDSTAC will be to provide advice and counsel to the Agency on a strategy to screen and test endocrine disrupting chemicals in humans, fish, and wildlife. This strategy will be aimed at developing information and methods for reducing risk to human health and the environment. EPA expects the EDSTAC to take a consensus approach to reaching their findings and recommendations.

Subject to consideration by the members of the proposed EDSTAC, the goals of an EPA-led dialogue on screening and testing for endocrine disruption may be to:

1. Develop a flexible process to select and prioritize chemicals for screening, recognizing the need to obtain and use appropriate exposure information in setting appropriate priorities.
2. Develop a process for identifying new and existing screening tests and mechanisms for their validation.
3. Agree on a set of available, validated screening tests for early application.
4. Develop a process and criteria for deciding when additional tests, beyond screening tests, are needed and how any of these additional tests will be validated.

These goals are likely to be pursued sequentially. These goals will also be pursued in a manner that recognizes that the data that will be available as a result of the endocrine disrupter screening and testing program will be used to reduce risk to human health. It is anticipated that this overarching risk management goal will eventually require the development of approaches to: Synthesize exposure and hazard information; and incorporate synthesized exposure and hazard information into risk reduction and risk management decisions.

For the EDSTAC to be successful, the Committee will have to clearly communicate to the public areas of agreement and recommendations. In addition, as components of a screening and testing program are agreed upon and implemented, processes need to be developed to clearly communicate to

the public the information resulting from priority setting, screening, testing, and risk management decision-making.

EPA's intention is for the EDSTAC to be a consensus-building process. EDSTAC, therefore, needs to be structured in a manner conducive to collaboration and consensus building. In particular, EDSTAC's structure needs to balance the demand for inclusion of key stakeholders and relevant expertise with the need for a manageable number of participants. EPA believes that it is important to have representatives of the chemicals industry, Federal and state government; representatives from environmental, public health, and labor organizations; and scientific expertise from academia on the Committee. EDSTAC members will discuss both policy and scientific issues in an attempt to develop consensus recommendations on how to create and implement an endocrine disrupter screening and testing program. The group is expected to meet approximately once every two months over a period of one year. Because it will not be possible to include all of those who have an interest in this issue, opportunities will be provided during the course of EDSTAC's deliberations to ensure that all voices will be heard. One of the primary agenda items for the October 31–November 1, 1996, meeting is to address questions of formation and membership of EDSTAC and procedures for ensuring that all stakeholders have an opportunity to be heard on the issues.

Dated: October 11, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–26811 Filed 10–16–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5636–9]

Science Advisory Board; Advisory Council on Clean Air Compliance Analysis; Open Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Advisory Council on Clean Air Compliance Analysis (ACCACA, or ''the Council,'' formerly known as the Clean Air Act Compliance Analysis Council, or CAACAC) of the Science Advisory Board (SAB) will conduct a two-day meeting on Thursday, November 7 and Friday, November 8, 1996. The meeting will commence at 9:00 a.m. eastern time each day and will adjourn no later than 5:00 p.m. each day. The meeting will take place in the Administrator's Conference Room, 1103WT in the West Tower at the U.S. Environmental Protection Agency Headquarters Building, 401 M Street, S.W., Washington, D.C. 20460. In this meeting, the Council intends to go to closure on the Retrospective Study Report to Congress, and to be introduced to the Prospective Study Report to Congress. It is anticipated that the Council will have briefings and discussions with Agency staff on additional staff papers and supporting documentation related to closure on the Retrospective Study and introductions to the methodology and approaches proposed for the Prospective Study.

The Council last met on June 5 and 6, 1996 (See Federal Register, Vol. 61, No. 87, Friday, May 3, 1996, pp. 19932–19935) and reviewed the Agency's draft document Report to Congress entitled ''The Benefits and Costs of the Clean Air Act, 1970 to 1990: Report to Congress,'' dated May 3, 1996, as well as findings of two subcommittees, the Physical Effects Review Subcommittee (PERS), and the Clean Air Scientific Advisory Committee's (CASAC), Air Quality Models Subcommittee (AQMS).

The Agency has asked the SAB to conduct the following activities in the proposed charge relating to this specific review:

(a) Review the revised draft Report to Congress, entitled ''The Benefits and Costs of the Clean Air Act, 1970 to 1990,'' USEPA, dated October, 1996, and

(b) Discuss the topic of the prospective study on costs and benefits, which will be presented to the Council at the November meeting.

The documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office.

FOR FURTHER INFORMATION: (a) For copies of the Agency's draft Section 812 CAA draft, Report to Congress, entitled ''The Benefits and Costs of the Clean Air Act, 1970 to 1990,'' USEPA, dated October, 1996 please contact Ms. Michelle Olawuyi, Secretary, Office of Economy and Environment (2172), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; tel. (202) 260–5488; FAX (202) 260–5732; E-Mail; Olawuyi.Michelle @epamail.epa.gov; (b) For a discussion of technical aspects of the Agency draft Report to Congress, dated October, 1996 please contact Mr. James DeMocker of EPA's Office of Policy Analysis and Review (OPAR) at (202) 260–8980, FAX (202) 260–9766, E-mail: Democker.Jim@epamail.epa.gov, or Mr. Tom Gillis of EPA's Office of Policy, Planning and Evaluation (OPPE) (2172) at (202) 260–4181; FAX (202) 260–5732; E-mail: Gillis.Thomas@epamail.epa.gov.

Members of the public who wish to make a brief oral presentation at this meeting should contact Mrs. Diana L. Pozun, Staff Secretary, (tel. 202–260–2553; FAX 202–260–7118) no later than October 31, 1996, in order to advise the Agency of your desire to participate in the meeting and to have time reserved on the agenda for public comments. This meeting is open to the public, but seating is limited and available on a first come basis. For a copy of the proposed agenda, please contact Ms. Pozun at the numbers given above. For questions regarding technical issues to be discussed, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, Science Advisory Board (1400), U.S. EPA, 401 M Street, S.W., Washington DC 20460, by telephone at (202) 260–2560, FAX at (202) 260–7118, or via the E-Mail: Kooyoomjian.Jack@epamail.epa.gov, or at Pozun.Diana@epamail.epa.gov.

Providing Oral or Written Comments at SAB Meetings

Members of the public who wish to make a brief oral presentation at the meetings should contact the listed Designated Federal Official no later than one week prior to the meeting in order to have time reserved on the agenda. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, for meetings, opportunities for oral comment will usually be limited to no more than five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting), may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

To Obtain More Information on or Participate in the SAB Meetings

These meetings are open to the public, but seating is limited and available on a first come basis. Written inquiries can be sent to the following address: U.S. Environmental Protection

Agency; Science Advisory Board (1400); 401 M Street, S.W., Washington, DC 20460, Phone: (202) 260–8414 or FAX (202) 260–7118.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 96–26445 Filed 10–16–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL 5637–2]

Proposed Settlement Agreement; Liberty Borough, PA PM–10 SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with Section 113(g) of the Clean Air Act (''Act''), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency (''EPA'') by the Group Against Smog and Pollution (''GASP''). The lawsuit concerns EPA's alleged failure to perform a nondiscretionary duty with respect to: (1) taking final action on the Liberty Borough Moderate area nonattainment state implementation plan (''SIP'') regulating particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (''PM–10'') emissions, and (2) determining, based on air quality data, whether the Liberty Borough nonattainment area attained the PM–10 national ambient air quality standards by the December 31, 1994 statutory attainment deadline.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Michael A. Prosper at the above address and must be submitted on or before [insert date 30 days after publication].

Dated: October 8, 1996.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 96–26629 Filed 10–16–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL 5635–1]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding Kansas City Power & Light Company, LaCygne, Kansas

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Kansas City Power & Light Company, LaCygne, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 4, 1996, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Kansas City Power & Light Company, LaCygne, Kansas, CWA Docket No. VII–96–W–0001.

The Complaint proposes a penalty of Six Thousand Dollars ($6,000) for the discharge of 797 lube oil into or upon LaCygne Lake and its adjoining shorelines, on or about July 2, 1995, without a permit issued under Section 402 of the Clean Water Act, in violation of Section 301 of the Clean Water Act.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Kansas City Power & Light Company is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: September 27, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–26189 Filed 10–16–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

October 9, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Dorothy Conway, Federal Communications Commission, (202) 418–0217.

Federal Communications Commission

OMB Control No.: 3060–0732.
Expiration Date: 10/31/99.

Title: Consumer Education Concerning Wireless 911 (NPRM CC 94–102).

Form No.: N/A.

Estimated Annual Burden: 1,563 annual hour; average 30 minutes to 1 hour per respondent; 2,500 respondents.

Description: The Commission has proposed a consumer education program to address a concern that consumers may not have a sufficient understanding of technological limitations that impede the transmission of wireless 911 calls. Wireless carriers would be required to inform customers regarding the scope of their services, including technical limitations that can impede transmission of wireless services in providing access to 911.

OMB Control No.: 3060–0069.

Expiration Date: 9/30/99.

Title: Application for Commercial Radio Operator License.

Form No.: FCC 756.

Estimated Annual Burden: 6,270 annual hours; 20 minutes per respondent; 19,000 respondents.

Description: The Communications Act requires the FCC to determine the qualifications of radio operators and license those qualified. This form is used to determine these qualifications.

OMB Control No.: 3060–0714.

Expiration Date: 9/30/99.

Title: Antenna Registration Number Required to as Supplement to Application Forms.

Form: N/A.

Estimated Annual Burden: 43,344 total annual hours; average 5 minutes per respondent; 516,000 responses.

Description: Effective July 1, 1996, the current antenna clearance procedures were replaced with a uniform registration procedure that applies to antenna structure owners. Structure owners receive an antenna structure registration number which is unique number identifying the structure. The Commission requires this registration number to be submitted with any of the applications for licensing. Collecting the registration number will enable the commission to maintain a registration database as well as process the applications with unnecessary delay related to antenna structure discrepancies.

OMB Control No.: 3060–0315.

Expiration Date: 9/30/99.

Title: Section 76.221 Sponsorship identification; list retention; related requirements.

Form: N/A.

Estimated Annual Burden: 225 total annual hours; average 30 minutes per respondent; 450 respondents.

Description: When a cablecast is of a political or controversial nature pursuant to Section 76.221(d), the cable system operator is required to retain a list of executive officers, or board of directors, or executive committee, etc. of the organization sponsoring the cablecast. Sponsorship announcements are waived with respect to the broadcast of ''want ads'' sponsored by the individual but the licensee shall maintain a list showing the name, address and telephone number of each advertiser pursuant to Section 72.221(f). This list shall be made available for public inspection.

OMB Control No.: 3060–0311.

Expiration Date: 9/30/99.

Title: Section 76.54 Significantly viewed signals; method to be followed for special showing.

Form: N/A.

Estimated Annual Burden: 24 total annual hours; average 2 hours per respondent; 12 respondents.

Description: Section 76.54 requires that notice of an audience survey that is conducted by an organization for significantly viewed signal purposes must be served on all licensees or permittee of television broadcast stations within whose predicted Grade Be contour the cable community or communities are located, and all other system community units, franchisees and franchise applicants in the cable community or communities, as well as the franchise authority. This notification shall be made at least 30 days prior to the initial survey period and shall include the name of the survey organization and a description of the procedures to be used.

OMB Control No.: 3060–0225.

Expiration Date: 9/30/99.

Title: 90.131(b) Amendment or dismissal of applications.

Form: N/A.

Estimated Annual Burden: 4 total annual hours; average .166 hours; 25 responses.

Description: Section 90.131(b) allows applicants to dismiss any pending application by sending a written request. Information will alert licensing personnel of applicant's desire to discontinue processing of application.

OMB Control No.: 3060–0326.

Expiration Date: 9/30/99.

Title: Section 73.69 Antenna Monitors.

Form: N/A.

Estimated Annual Burden: 30 total annual hours; average 1.5 hours per respondent; 20 responses.

Description: Section 73.69(c) requires AM station licensees with directional antennas to file an informal request to operate without required monitors with the Engineer in Charge of the radio district in which the station is located when conditions beyond the control of the licensee prevent the restoration of an antenna monitor to service within a 120 day period. Section 73.69(d)(1) requires that AM licensees with directional antennas request and obtain temporary authority to operate with parameters at variance with licensed values when an authorized antenna monitor is replaced pending issuance of a modified license specifying new parameters. Section 73.69(d)(5) requires AM licensees with directional antennas to submit an informal request for modification of license to the FCC within 30 days of the date of antenna monitor replacement.

OMB Control No.: 3060–0309.

Expiration Date: 9/30/99.

Title: Section 74.1281 Station Records.

Form: N/A.

Estimated Annual Burden: 2,450 total annual hours; 1 hour per response; 2,450 respondents.

Description: Section 74.1281 requires that licensees of FM translator/booster stations maintain separate records. The records include the current instrument authorization, official correspondence with FCC, maintenance records, contracts, permission for rebroadcasts and other pertinent documents. They also include entries concerning any extinguishment or improper operation of tower lights.

OMB Control No.: 3060–0263.

Expiration Date: 9/30/99.

Title: 90.177 Protection of certain radio receiving locations.

Form: N/A.

Estimated Annual Burden: 150 total annual hours; average 30 minutes per respondent; 300 responses.

Description: This rule requires applicants proposing to locate near certain radio receiving sites to notify those parties. Requirement protects critical national security and research sites from interference.

OMB Control No.: 3060–0735.

Expiration Date: 9/30/99.

Title: Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees and Implementation of Section 257 of the Communications Act—Elimination of Market Entry Barriers (Notice of Proposed Rulemaking WT Docket 96–148).

Form: N/A.

Estimated Annual Burden: 11,665 total annual hours; average .5–3 hours per respondent; 10,370 responses.

Description: On June 28, 1996 the Commission adopted a NPRM proposing certain modifications to our broadband

personal communications service (PCS) rules to expand our geographic partitioning and spectrum disaggregation provisions. The Commission believes that the proposals made will facilitate the efficient use of broadband PCS spectrum by providing licensees with additional flexibility to tailor their business strategies, will increase competition by allowing market entry by new players, and will expedite the provision of broadband PCS service to areas that may not otherwise receive broadband PCS or other wireless services in the near future. For ease of administration and to lessen the burden on applicants by adopting new filing requirements we propose to follow existing partial assignment procedures for broadband PCS licenses in reviewing requests for geographic partitioning, disaggregation or a combination of both.

OMB Control No.: 3060–0641.
Expiration Date: 9/30/99.
Title: Notification to File Progress Report.
Form: FCC 218–I.
Estimated Annual Burden: 587 total annual hours; average 1 hour per respondent; 587 responses.
Description: Section 95.833 requires that each IVDS licensee file a progress report at the conclusion of each benchmark period to information the Commission of the construction status of the system. The Commission rules were recently revised to eliminate the requirement for submission of progress reports at the conclusion of the one year benchmark. Submissions are now required only at the conclusion of the three and five year benchmark periods.

OMB Control No.: 3060–0057.
Expiration Date: 9/30/99.
Title: Application for Equipment Authorization Sections 2.911, 2.963(a), 2.975(a), 2.983, 2.1003(a).
Form: FCC 731.
Estimated Annual Burden: 134,400 total annual hours; average 18–30 hours per respondent; 5,600 responses.
Description: Commission rules require approval prior to marketing of equipment regulated under certain Part 15 and Part 18 rule sections, based on a showing of compliance with technical standards established in the rules for each device operated under the applicable rule part. Rules governing certain equipment operating the licensed services also require equipment authorizations established in procedural rules in Part 2. Such a showing of compliance aids in controlling potential interference to radio communications, and the data may be used for investigating complaints of harmful interference.

OMB Control No.: 3060–0393.
Expiration Date: 10/31/99.
Title: Section 73.54 Antenna Resistance and Reactance Measurements.
Form: N/A.
Estimated Annual Burden: 50 total annual hours; average .25–1 hour per respondent; 200 responses.
Description: Section 73.54(d) requires that AM Licensees file notification with the FCC when determining power by the direct method. This notification requirement is accomplished through a formal application process and has OMB approval under FCC form 302. In addition, § 73.54(d) requires that background information regarding antenna resistance measurement data from AM stations must be kept on file at the station.

OMB Control No.: 3060–0175.
Expiration Date: 10/31/99.
Title: Section 73.1250 Broadcasting Emergency Information.
Form: N/A.
Estimated Annual Burden: 50 total annual hours; average 1 hour per respondent; 50 responses.
Description: Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to, tornadoes, hurricanes, floods, tidal waves, earthquakes, and school closing. Section 73.1250(e) requires that immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages or when daytime facilities were used during nighttime hours by an AM station, a report in letter form shall be forwarded to the FCC in Washington, D.C., setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information and a brief description of the material carried during the emergency. A certification of compliance with the noncommercialization provision must accompany the report where daytime facilities are used during nighttime hours by an AM station. The report is used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

OMB Control No.: 3060–0394.
Expiration Date: 10/31/99.
Title: Section 1.420 Additional procedures in proceedings for amendment of FM, TV or Air-Ground Table of Allotments.
Form: N/A.
Estimated Annual Burden: 10 total annual hours; average 20 minutes—2 hours per respondent; 30 responses.
Description: Section 1.420 requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that an expression of interest in applying for, constructing, and operating a station was filed under appropriate circumstances and not to extract payment in excess of legitimate and prudent expenses.

OMB Control No.: 3060–0251.
Expiration Date: 10/31/99.
Title: Section 74.833 Temporary Authorization.
Form: N/A.
Estimated Annual Burden: 12 total annual hours; average 2 hours per respondent; 6 responses.
Description: Section 74.833 requires that requests for special temporary authorization be made by informal applications for low power auxiliary station operations which cannot be conducted in accordance with § 74.24 of the FCC's rules and for operations of a temporary nature. (Section 74.24 states that classes of broadcast auxiliary stations may be operated on a short-term basis under the authority conveyed by a Part 73 licensee without prior authorization from the FCC, subject to certain conditions.) The data is used by FCC staff to insure that the temporary operation of a low power auxiliary station will not cause interference to other existing stations and to assure compliance with current FCC rules and regulations.

OMB Control No.: 3060–0423.
Expiration Date: 10/31/99.
Title: Section 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.
Form: N/A.
Estimated Annual Burden: 26 total annual hours; average 20 minutes—8 hours per respondent; 80 responses.
Description: Section 73.3588 requires a petitioner to obtain approval from the FCC to dismiss or withdraw its petition

to deny when it is filed against a renewal application and applications for new construction permits, modifications, transfers and assignments. This request for approval must contain a copy of any written agreement, an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition and an itemization of the expenses for which it is seeking reimbursement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that a petition to deny or informal objection was filed under appropriate circumstances and not to extract payments in excess of legitimate and prudent expenses.

OMB Control No.: 3060–0452.

Expiration Date: 10/31/99.

Title: Section 73.3589 Threats to file petitions to deny or informal objections.

Estimated Annual Burden: 5 total annual hours; average 20 minutes—1 hour per respondent; 15 responses.

Description: Section 73.3589 requires an applicant or licensee to file with the FCC a copy of any written agreement related to the dismissal or withdrawal of a threat to file a petition to deny or informal objection and an affidavit certifying that neither the would-be petitioner nor any person or organization related to the would-be petitioner has not or will not receive any consideration in excess of legitimate and prudent expenses incurred in threatening to file. The data is used by FCC staff to ensure that a threat to file a petition to deny or informal objection was made under appropriate circumstances and not to extract payments in excess of legitimate and prudent expenses.

OMB Control No.: 3060–0120.

Expiration Date: 10/31/99.

Title: Broadcast Equal Employment Opportunity Model Program Report.

Form: FCC 396–A

Estimated Annual Burden: 2,526 total annual hours; average 1 hour per respondent; 2,526 responses.

Description: FCC Form 396–A is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station. The data is reviewed by FCC analysts to determine if stations will provide equal employment opportunity to all qualified persons without regard to race, color, religion, sex or national origin.

OMB Control No.: 3060–0003.

Expiration Date: 10/31/99.

Title: Application for Amateur Operator/Primary Station License.

Form: FCC 610.

Estimated Annual Burden: 30,876 total annual hours; average 20 minutes per respondent; 93,000 responses.

Description: FCC rules require that applicants file the FCC 610 to apply for a new, renewed or modified license. The form is required by the Communications Act of 1934, as amended.

OMB Control No.: 3060–0209.

Expiration Date: 10/31/99.

Title: Section 73.1920 Personal Attacks.

Form: N/A

Estimated Annual Burden: 338 total annual hours; average 30 minutes per respondent; 676 responses.

Description: During the presentation of views on a controversial issue of public importance, an attack may be made upon the honesty, character, integrity, or like personal qualities of an identified person or group. Section 73.1920 requires that a licensee of a broadcast station must transmit to the person or group attacked a notification of the date, time and identification of the broadcast of a personal attack, a script or tape of the attack, and an offer of a reasonable opportunity to respond to the attack over the licensee's facilities. This data is used to notify a person or group that a personal attack has been made and to afford that person or group attacked an opportunity to respond to the attack over the licensee's facilities.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–26585 Filed 10–16–96; 8:45 am]

BILLING CODE 6712–01–P

[CC Docket No. 96–45; DA 96–1679]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 10, 1996 the Federal Communications Commission released a public notice, as required by law, to announce a meeting of the Federal-State Joint Board on October 17, 1996. The purpose of the notice is to inform the general public of a meeting that will be held by the Federal-State Joint Board on universal service.

FOR FURTHER INFORMATION CONTACT: Astrid Carlson, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, at (202) 530–6023.

SUPPLEMENTARY INFORMATION: The Federal-State Joint Board in CC Docket No. 96–45 will hold an Open Meeting on Thursday, October 17, 1996 at 9:00 a.m., in Room 856 at 1919 M Street, N.W., Washington, D.C. At the meeting, the Federal-State Joint Board will address universal service issues set forth in Section 254 of the Telecommunications Act.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Bureau Chief Common Carrier Bureau.

[FR Doc. 96–26584 Filed 10–16–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, October 22, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, October 24, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Title 26 Certification Matters.
Correction and Approval of Minutes.
Advisory Opinion 1996–43: Mark A. Dunlea for Green Party of New York State (tentative).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 96–26830 Filed 10–15–96; 2:48 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA's use of surveys to collect disaster related information. FEMA will use various modes of data collection including: mailed questionnaires, phone surveys, and computerized surveys. The survey respondents will be individual disaster applicants, FEMA staff, state and local government officials, voluntary agency officials, and officials from other Federal agencies involved in delivering disaster assistance.

SUPPLEMENTARY INFORMATION: The surveys are conducted in response to Executive Order 12862 which requires ''all executive departments and agencies that provide significant services directly to the public'' to meet established customer service standards and to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.''

Collection of Information

Title. FEMA Disaster Assistance and Operations Customer Satisfaction Surveys

Type of Information Collection. Revision

OMB Number: 3067–0256

Form Numbers. NA

Abstract. The surveys provide FEMA with information about customer satisfaction while serving as a program evaluation tool. The surveys measure satisfaction with performance and helps interpret the effects of disaster related policy changes or innovations. The surveys are also used to measure trends and patterns in customer satisfaction. FEMA will mail a written survey to a random sample of disaster assistance applicants for all disasters in which individual assistance is available. FEMA proposes to conduct a phone survey of officials from other Federal agencies, state and local governments, and voluntary agencies and a computerized survey of FEMA disaster field office employees. It is proposed that the phone and computerized surveys be conducted approximately three to five times a year in FY97 and after every presidentially declared disaster (approximately 60 times a year) in FY98 and FY99.

Affected Public: Individuals or households, business or other for-profit institutions, not-for-profit institutions, Federal Government, state, local, or tribal government. It is important to note that FEMA does not solicit survey responses from businesses or other for-profit institutions but it is possible that an individual applicant sampled will respond as a business owner.

Estimated Total Annual Burden Hours.

Respondent Type	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)
Individual disaster assistance applicants and FEMA staff	25,000	1	.25	6,250
Officials from: state and local governments, voluntary agencies, other Federal agencies	2,500	1	.5	1,250
Total	27,500			7,500

Estimated Cost. $300,000 per year to the Federal Government.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance 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, including the validity of the methodology and assumptions used; (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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Kedra Mitchell, Program Specialist, Federal Emergency Management Agency, Response and Recovery Directorate, Office of Standards and Evaluations, (202)646–3381 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: October 3, 1996.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 96–26521 Filed 10–16–96; 8:45 am]

BILLING CODE 6718–01–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency's submitting a request for review and approval of a collection of information. The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting the collection of information be approved by October 18, 1996, for use through January 1997.

SUPPLEMENTARY INFORMATION. The Director, FEMA has directed the Preparedness, Training, and Exercises Directorate to conduct a review and analysis of the Emergency Education NETwork to determine if EENET is the most cost-effective method to design and deploy Emergency Management

Institute field training and distance learning activities. Such training and development programs are provided to Federal, State and local governments, private for-profit and non-profit organizations, and others to support the establishment or enhancement of emergency management capabilities. The information is used by them to develop and implement necessary programs and organizations to save lives and protect property in the event of emergencies. EENET is a consolidated training and education support system that is designed to provide training programs with a wide range of support capabilities and high-tech course deployment vehicles in the areas of videotape, television production, and videoconferencing. The review of EENET was included as an initiative in the Agency's National Performance Review (NPR)2 Internal Management Recommendations.

Collection of Information

Title: Emergency Education NETwork (EENET) 1996 User Survey.

Type of Information Collection. New.

Abstract: As part of FEMA's NPR2 Internal Management Recommendations, one of the approved initiatives is to conduct a thorough analysis of EENET to determine if it is the most cost-effective method to provide the required training, and if not, develop and implement alternative training approaches. A survey questionnaire will be used to obtain information from previous customers, both users within the Agency and recipients of the training, outside the Agency. FEMA will survey all: FEMA regional office employees who work with EENET programming, and State Emergency Management Office employees who participant in, and view, with EENET programming. In addition, a random sample of other users, i.e., State and local government, private for-profit, not-for-private organizations, and other employees, will be selected to complete the survey. FEMA expects the results of the analysis to provide the basis for making decisions for improving the quality and delivery of EENET programming, while reducing its production and deployment costs.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 1,500.

Estimated Time Per Response. 12 minutes.

Estimated Total Annual Burden Hours. 300.

Frequency of Response: This is a one-time survey.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance 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, including the validity of the methodology and assumptions used; (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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 30 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Ms. Victoria Wassmer, FEMA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Contact Sue Downin, Producer, FEMA/PT&E/SS, (301) 447–1073 for additional information. Contact Ms. Muriel Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: October 3, 1996.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

BILLING CODE 6718–01–P

A draft copy of the proposed survey questionnaire is provided below. Since the comment period for this collection of information is only 30 days, please use the draft to provide your comments and suggestions to the ADDRESSEE provided above. If you have additional questions, please contact the appropriate individual listed in the above FOR FURTHER INFORMATION CONTACT section.

OMB No. XXXX-XXXX
Expiration Date: XXXXXXXXXX

Burden Disclosure Notice: Public reporting burden for this collection of information is estimated to average 12 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and submitting the collection of information. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472. Do not send your completed form to this address. Please use the return address provided at the end of the form. You are not required to respond to a collection of information unless it displays a valid OMB control number.

EMERGENCY EDUCATION NETWORK
1996 USER SURVEY

The Federal Emergency Management Agency is conducting an Emergency Education NETwork (EENET) survey of its users. Users will be randomly selected from the EENET user mailing list.. This survey is needed to determine if EENET is the most cost-effective method to provide the required support to establish or enhance the emergency management capabilities of Federal, State and local governments. This survey is strictly voluntary and will require no more than 12 minutes of your time to complete the information. Please assist us with this effort by answering the following questions. Your input will allow us to meet your distance learning needs more effectively.

1. Please provide the following demographic information about yourself and your office.

   Your position title: _____

   Your office name: _____

   Is your office (Check one.)

   _____ FEMA Region
   _____ State Government
   _____ Local Government
   _____ Private-For-Profit
   _____ Other (Describe) _____
   _____ Federal Government
   _____ Military
   _____ Private Non-Profit

2. Which of the following applies to your use of EENET? (Check all that apply and provide any comments you wish to make.)

   _____ This office is a receive site.
   _____ This office uses EENET video tapes.
   _____ This office is a receive site and uses EENET videotapes.

   Comments: _____
   _____
   _____

3. What is your area of interest?

___ Management
___ Disaster Relief
___ Disaster Response
___ Disaster Recovery
___ Investigation
___ Fire Prevention
___ Program/Activity
___ Training/Education
___ Public Works
___ Hazard Mitigation
___ Emergency Preparedness
___ Emergency Medical Service
___ Scientific/Engineering
___ Fire Suppression
___ Health
___ Other (Specify) _____

4. How long have EENET programs of any sort been used by your office? _____ years

5. In the past year, how frequently have you or your office used EENET programs? (Check one.)

___ Every broadcast ___Occasionally ___ Often ___ Not used during past year

6. This question is in two parts.
Part I, tell us how the EENET programs are used by you or your office (e.g., for training).
Part II, tell us on a scale of 1 to 5 with 1 being the lowest and 5 the highest, how effective EENET programs are in each area of use.

Part I (Check all that apply)	Part II (Circle the number that applies)
___ Technical training	1 2 3 4 5
___ Public awareness	1 2 3 4 5
___ Training updates or current trends	1 2 3 4 5
___ Other uses (Please describe below.)	
_____	1 2 3 4 5
_____	1 2 3 4 5
PLEASE RATE OVERALL	1 2 3 4 5

7. Overall, how would you rate the content of EENET programs, in terms of the contents being up to date and relevant to your needs? (Use a scale from 1 to 5, 1 is "very poor", 2 is "poor", 3 is "neutral", 4 is "good" and 5 is "very good".) Provide any comments you wish to make.

	Up-to-Date	Relevant
EENET broadcasts	1 2 3 4 5	1 2 3 4 5
EENET videotapes	1 2 3 4 5	1 2 3 4 5

Comments: _____
_____
_____

8. Please estimate the degree of cost savings that EENET helps you to achieve, compared to alternative ways of delivering similar content (e.g., State sponsored workshops, travel to the National Emergency Training Center (NETC), private seminars). (Check one.)

_____ EENET programs cost significantly less
_____ EENET programs cost somewhat less
_____ EENET program costs are about the same
_____ EENET programs cost somewhat more
_____ EENET programs cost significantly more

Comments: _____

_____

_____

9. Are there additional topics that you feel need to be included in future EENET programs?
_____yes _____no
If yes, please list the two most important topics you would like to see addressed on future EENET programs.

_____

_____

10. Do you feel that the format for EENET broadcasts should be changed? _____yes _____no
If yes, what recommendations do you have concerning changes that are needed in the format of EENET programs? (Please list.)

_____

_____

_____

_____

11. Would you/your office be willing to participate in special programs aired on EENET?
_____yes _____no

12. Which special programs would you/your office be willing to participate in? (Check all that apply.)
_____ Two-way video pilot broadcasts
_____ Multi-Regional training
_____ Multi-State training
_____ Co-sponsor of broadcasts
_____ Other (Please describe.) _____

13. Please share anything else you can think of concerning the use of EENET programs as they relate to your office.

_____

_____

_____

14. May we contact you to follow up on your responses or comments? ____ yes _____ no
If yes, please provide your name and telephone number

_____

Thank you for your participation in this survey. Please return this completed questionnaire to:

B. J. Boyd
National Emergency Training Center
16825 South Seton Avenue
Building E - Room 220
Emmitsburg, MD 21727

or FAX # (301) 447-1112

[FR Doc. 96–26522 Filed 10–16–96; 8:45 am]
BILLING CODE 6718–01–C

[FEMA–1139–DR]

Maryland; 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 Maryland (FEMA–1139–DR), dated September 17, 1996, and related determinations.

EFFECTIVE DATE: October 1, 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, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter Cote of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Douglas Gore as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–26523 Filed 10–16–96; 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: October 2, 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 area 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:

Rockingham County for Individual Assistance (already designated for direct Federal assistance, Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–26526 Filed 10–16–96; 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: October 2, 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 Juana Diaz, Manati and Trujillo Alto for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

The municipalities of Rio Grande and Loiza for Public Assistance (already designated for Individual Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–26637 Filed 10–16–96; 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 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 the incident period for this disaster is closed effective September 11, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–26638 Filed 10–16–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1140–DR]

South 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 South Carolina (FEMA–1140–DR), dated September 30, 1996, and related determinations.

EFFECTIVE DATE: September 30, 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 30, 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 South Carolina, resulting from severe winds and flooding associated with Hurricane Fran on September 4, 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 South Carolina.

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 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 Shelley S. Boone 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 South Carolina have been affected adversely by this declared major disaster:

The counties of Dillon, Horry, Marion, and Williamsburg for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–26524 Filed 10–16–96; 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 27, 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 county of Albemarle and the independent city of Charlottesville for Individual Assistance, Public Assistance and Hazard Mitigation (already designated for direct Federal assistance).

Westmoreland County for Individual Assistance and Hazard Mitigation (already designated for direct Federal assistance).

Botetourt County for Individual Assistance (already designated for direct Federal assistance, Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–26525 Filed 10–16–96; 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: October 2, 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:

Cumberland County for Individual Assistance and Hazard Mitigation (already designated for direct Federal assistance).

The counties of Westmoreland and Orange for Public Assistance (already designated for Individual Assistance, Hazard Mitigation, and direct Federal assistance).

The counties of Bath and Giles for Public Assistance and Hazard Mitigation (already designated for direct Federal assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–26635 Filed 10–16–96; 8:45 am]

BILLING CODE 6718–02–P

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) gives notice that the maximum amounts for Individual and Family Grants and grants to State and local governments and private nonprofit facilities are adjusted for disasters declared on or after October 1, 1996.

EFFECTIVE DATE: October 1, 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 Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, prescribes that grants made under Section 411, Individual and Family Grant Program, and grants made under Section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under Sec. 411 of the Act, with respect to any single disaster, is increased to $13,100 for all disasters declared on or after October 1, 1996.

Notice is also hereby given that the amount of any grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $46,000 for all disasters declared on or after October 1, 1996.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 2.9 percent for the prior 12-month period. The information was published by the Department of Labor during September 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–26636 Filed 10–16–96; 8:45 am]

BILLING CODE 6718–02–P

Members of Senior Executive Service Performance Review Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice lists the names of the members of the FEMA Senior Executive Service Performance Review Board.

EFFECTIVE DATE: July 18, 1996.

FOR FURTHER INFORMATION CONTACT: Denise R. Yachnik, Executive Coordinator, Office of Human Resources Management, 500 C Street, S.W., Washington, DC 20472, (202) 646–3040.

SUPPLEMENTARY INFORMATION: The names of the members of the FEMA Senior Executive Service Performance Review Board established under 5 U.S.C. 4314 (c)(4) are:

John L. Matticks, Donald G. Bathurst, Robert P. Fletcher, James L. Taylor, Michelle M. Burkett, Gordon D. Fullerton, Laurence W. Zensinger, Dennis E. Owens.

Dated: October 8, 1996.

John P. Carey,

Gneral Counsel.

[FR Doc. 96–26639 Filed 10–16–96; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 30, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Eldred Ralph and Mary Lou Crawford, both of Treasure Island, Florida; to retain a total of 23.96 percent of the voting shares of First Central Bank, St. Petersburg, Florida.

Board of Governors of the Federal Reserve System, October 10, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–26622 Filed 10–16–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Liberty Financial Corporation, West Des Moines, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of B & K Bancorporation, West Des Moines, Iowa, and thereby indirectly acquire Liberty Bank & Trust Company, Bloomfield, Iowa; Winnebago County Bancorporation, West Des Moines, Iowa, and thereby indirectly acquire Liberty Bank & Trust Company, Forest City, Iowa; L.B.T. Bancorporation, West Des Moines, Iowa, and thereby indirectly acquire Liberty Bank & Trust Company, Lake Mills, Iowa; First Liberty Bancorp., West Des Moines, Iowa, and thereby indirectly acquire Liberty Bank & Trust, Mason City, Iowa; BW3 Bancorporation, West Des Moines, Iowa, and thereby indirectly acquire Liberty Bank & Trust Company, NA, Pocahontas, Iowa; I.S.B. Bancorporation, Inc., West Des Moines, Iowa, and thereby indirectly acquire Liberty Bank & Trust Company, Woodbine, Iowa; A.B.C. Bancorporation, Inc., Tucson, Arizona, and thereby indirectly acquire and Liberty Bank & Trust Company, Tucson, Arizona.

In connection with this application, Applicant also has applied to acquire L.S.B. Bancorp., West Des Moines, Iowa, and thereby indirectly acquire Liberty Savings Bank, FSB, Johnston, Iowa; Liberty Loan Store, West Des Moines, Iowa; Liberty Mortgage Company, West Des Moines, Iowa; and Liberty Leasing Company, West Des Moines, Iowa, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y; in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; in consumer finance counseling, pursuant to § 225.25(b)(20) of the Board's Regulation Y; in arranging commercial real estate equity financing, pursuant to § 225.25(b)(14) of the Board's Regulation Y; and in leasing personal and real property, pursuant to § 225.25(b) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Albany Bancorp, Inc., Albany, Kentucky; to acquire 100 percent of the voting shares of First National Bancorp of Columbia, Inc., Columbia, Kentucky, and thereby indirectly acquire First National Bank of Columbia, Columbia, Kentucky.

Board of Governors of the Federal Reserve System, October 10, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–26623 Filed 10–16–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Section 601, Effective Medication Guides of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1997 (P.L. 104–180) Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, Office of Public Health and Science, with authority to redelegate, as appropriate, all the authorities vested in the Secretary of Health and Human Services under Section 601, Effective Medication Guides of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1997 (P.L. 104–180), as amended hereafter.

Functions vested in the Secretary under Section 601 of P.L. 104–180 are as follows: to request that relevant parties collaborate on the development and submission of an acceptable long-range action plan consistent with the goals of FDA Proposed Rule (60 FR, 44182, August 24, 1995); to review, accept, suggest modification or reject the plan within 30 days of submission; to confer with and assist private parties in the development of the plan; not later than January 1, 2001, to review the status of private sector initiatives in achieving the goals of the plan described in 60 FR, 44182, August 24, 1995; and to seek public comment on other initiatives that may be carried out to meet those goals. This delegation excludes the authority to submit reports to Congress.

This delegation is effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Assistant Secretary for Health, Office of Public Health and Science, or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: October 7, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–26666 Filed 10–16–96; 8:45 am]

BILLING CODE 4160–01–M

Centers for Disease Control and Prevention

[30DAY–21]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on September 24, 1996.

Proposed Project

1. 1997 National Health Interview Survey, Basic Module—(0920–0214)—Revision—The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2,000.''

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign which was tested and partially implemented in 1996. Improved information technology was included, especially computer assisted personal interviewing (CAPI). This clearance is for the first full year of data collection using the redesigned NHIS data system. This data collection, planned for January–December 1997, will result in publication of new national estimates of health statistics and release of public use micro data files. The new data system is expected to be in the field for at least 10 years. The total cost to respondents is estimated at $697,500.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
Family	42,000	1	0.5
Sample adult	42,000	1	0.5
Sample child	18,000	1	0.25

The total annual burden is 46,500.

Dated: October 9, 1996.

[FR Doc. 96–26628 Filed 10–16–96; 8:45 am]

BILLING CODE 4163–18–P

Health Care Financing Administration

[HCFA–605]

Agency Information Collection Activities: Proposed Collection; 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, is publishing the following summary of proposed collections for public comment. 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.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Hospital Provider of Extender Care Services (Swing-Beds) in the Medicare and Medicaid Programs, 42 CFR 447.280; *Form No.:* HCFA–605; *Use:* This is a facility identification and screening form. It will be completed by a hospital that is requesting approval. It initiates the process of determining the hospital's

eligibility and also requests approval for their bed count category. *Frequency:* Other (one time usage for initial application); *Affected Public:* Business or other for profit, Not for profit institutions, and Federal Government; *Number of Respondents:* 1,500; *Total Annual Hours:* 375.

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 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 3, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 96–26620 Filed 10–16–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Announcement of Technical Assistance Workshops for Programs Administered by the Division of Disadvantaged Assistance, Bureau of Health Professions

SUMMARY: The Health Resources and Services Administration (HRSA) announces that technical assistance workshops will be held for the FY 1997 competitive grant cycles for the Health Careers Opportunity Program and the Minority Faculty Fellowship Program.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Brooks, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4493.

SUPPLEMENTARY INFORMATION: The Division of Disadvantaged Assistance will be conducting two (2) technical assistance workshops for potential applicants for the FY 1997 competitive grant cycles for the Health Careers Opportunity Program and the Minority Faculty Fellowship Program.

A workshop will be conducted on November 13 and will be repeated on November 14, 1996 in the Parklawn Building Conference Center, 5600 Fishers Lane, Rockville, Maryland 20857. Each workshop is limited to 100 attendees; therefore, individuals requesting to attend one (1) of these workshops must register in advance with Ms. Carolyn Robinson at (301) 443–4493 or by FAX on (301) 443–5242.

The program will commence at 8:30 a.m. each day and will conclude by 5:00 p.m. Attendees must make their own hotel reservations. Expenses incurred by attendees will not be supported by the Federal government. Participation in the technical assistance meetings does not assure approval and funding of applications submitted for competitive review.

Dated: October 9, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–26687 Filed 10–16–96; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4086–N–59]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 16, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael Wells, Program Evaluation Division, Telephone number (202) 755–7470 ext. 121 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information 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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Monthly Digest of Current Housing Situation.

OMB Control Number: 2502–0250.

Description of the need for the information and the proposed use: To provide a timely series of comprehensive information detailing interest rates and the availability of financing for FHA-insured and conventional first mortgage loans and trends in the home construction market.

Agency form numbers: HUD–2499.

Members of affected public: Business or other for-profit.

An estimation of the total numbers of hours needed to prepare the information collection is 520, number of respondents is 3,120 frequency response is monthly and the collection of information is estimated to average 10 minutes per response. Status of the proposed information collection: Extension of a currently approved collection.

Authority: Secton 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 1, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–26570 Filed 10–16–96; 8:45 am]

BILLING CODE 4210–27–M

Office of the Secretary

[Docket No. FR 4108–D–03]

Delegation of Authority for the Loan Guarantee Recovery Fund

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates the authority to administer the Loan Guarantee Recovery Program, Authorized by the Church Arson Prevention Act of 1996, from the Secretary of the Department of Housing and Urban Development to the Assistant Secretary for Community Planning and Development.

FOR FURTHER INFORMATION CONTACT: Anthony Johnston, Deputy Director, Financial Management Division, Office of Block Grant Assistance, Room 7180, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 708–1871. A TTY number is available for hearing/speech-impaired individuals at (202) 708–1455. This number may also be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399. FAX inquiries may be sent to Mr. Johnston at (202) 708–1798. Other than the ''800'' number, these telephone numbers are not toll-Free.

SUPPLEMENTARY INFORMATION: The Church Arson Prevention Act of 1996, Pub. L. 104–155, 110 Stat. 1392, approved July 3, 1996, provides Federal, State and local law-enforcement agencies with additional means to address violent crimes against places of worship, strengthens the penalties for the commission of these crimes, and authorizes Federal assistance for rebuilding efforts. Section 4 of the Act, entitled ''Loan Guarantee Recovery Fund,'' authorizes the Secretary of the Department of Housing and Urban Development (the ''Secretary'') to guarantee loans made by financial institutions to assist certain nonprofit organizations that have been damaged as a result of acts of arson or terrorism. The Act provides that the Secretary may use this guarantee authority to subsidize up to $10 million in loan principal in accordance with such procedures as he may establish by regulation.

The present document delegates to the Assistant Secretary for Community Planning and Development all power and authority granted by Section 4 of the Church Arson Prevention Act of 1996. The authority delegated does not include the authority to sue or be sued. Additionally, by executing the present delegation of authority, the Secretary is ratifying all actions taken by the Assistant Secretary for Community Planning and Development on behalf of the Secretary, from September 5, 1996, through the date of the signature of this document, with respect to the Church Arson Prevention Act of 1996.

Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated

The Secretary of the Department of Housing and Urban Development delegates to the Assistant Secretary for Community Planning and Development all power and authority granted by Section 4 of the Church Arson Prevention Act of 1996, entitled the Loan Guarantee Recovery Fund, except as provided in Section B of this delegation of authority.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue and be sued.

Section C. Actions Ratified

The Secretary of the Department of Housing and Urban Development hereby ratifies all actions previously taken by the Assistant Secretary for Community Planning and Development, pursuant to this Act, from September 5, 1996, through the present date.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 3535 (d).

Dated: October 8, 1996.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 96–26568 Filed 10–16–96; 8:45 am]

BILLING CODE 4210–32–M

[Docket No. FR–4108–D–04]

Office of the Assistant Secretary for Community Planning and Development; Redelegation of Authority for the Loan Guarantee Recovery Fund

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates the authority to administer the Loan Guarantee Recovery Program, authorized by the Church Arson Prevention Act of 1996, from the Assistant Secretary for Community Planning and Development to the General Deputy Assistant Secretary for Community Planning and Development and to the Deputy Assistant Secretary for Grant Programs.

FOR FURTHER INFORMATION CONTACT: Anthony Johnston, Deputy Director, Financial Management Division, Office of Block Grant Assistant, Room 7180, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 708–1871. A TTY number is available for hearing/speech-impaired individuals at (202) 708–1455. This number may also be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399. FAX inquiries may be sent to Mr. Johnston at (202) 708–1798. Other than the ''800'' number, these telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION: The Church Arson Prevention Act of 1996, Public Law 104–155, 110 Stat. 1392, approved July 3, 1996, provides Federal, State and local law-enforcement agencies with additional means to address violent crimes against places of worship, strengthens the penalties for the commission of these crimes, and authorizes Federal assistance for rebuilding efforts. Section 4 of the Act, entitled ''Loan Guarantee Recovery Fund,'' authorizes the Secretary of the Department of Housing and Urban Development (the ''Secretary'') to guarantee loans made by financial institutions to assist certain nonprofit organizations that have been damaged as a result of acts of arson or terrorism. The Act provides that the Secretary may use this guarantee authority to subsidize up to $10 million in loan principal in accordance with such procedures as he may establish by regulation.

Elsewhere in today's Federal Register, the Secretary transferred to the Assistant Secretary for Community Planning and Development the authority with respect to the Loan Guarantee Recovery Fund. Thus, by this redelegation, the Assistant Secretary for Community Planning and Development redelegates to the General Deputy Assistant Secretary for Community Planning and Development and to the Deputy Assistant Secretary for Grant Programs all power and authority granted by Section 4 of the Church Arson Prevention Act of 1996. The authority delegated does not include the authority to sue or be sued.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates authority as follows:

Section A. Authority Delegated

The Assistant Secretary for Community Planning and Development redelegates individually to the General Deputy Assistant Secretary for

Community Planning and Development and to the Deputy Assistant Secretary for Grant Programs all power and authority granted by Section 4 of the Church Arson Prevention Act of 1996, entitled the Loan Guarantee Recovery Fund, except as provided in Section B of this redelegation of authority.

Section B. Authority Excepted

The authority redelegated under Section A does not include the power to sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 8, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–26569 Filed 10–16–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption; Issuance

On September 26, 1996, the Fish and Wildlife Service (Service) published in Federal Register Vol 61, No. 188, page 50503, a notice of the emergency issuance of a permit (PRT–819183) to the Denver Zoological Gardens for the import of a captive born black rhinoceros (*Diceros bicornis*) from the Tennoji Zoological Gardens, Osaka, Japan. Due to health concerns at the Denver Zoological Gardens, the facility was unable to accept this import and on October 1, 1996, the Service issued a permit (PRT–820560) to allow the import of this animal to the AZA Rhino Advisory Group at the Caldwell Zoo, Tyler Texas. The 30 day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the survival of the rhino existed and that no reasonable alternative was available to the applicant as indicated in the previous notice.

Dated: October 11, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–26658 Filed 10–16–96; 8:45 am]

BILLING CODE 4310–55–P

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–819862

Applicant: Clingerman, Larry, North Rose, NY.

The applicant requests a permit to export the sport-hunted trophy of one, male Eld's deer (*Cervus eldi*) culled from a captive herd maintained by Priour Brothers Ranch for enhancement of the species.

PRT–819865

Applicant: Clingerman, Larry, North Rose, NY.

The applicant requests a permit to export the sport-hunted trophy of one, male barasingha (*Cervus duvauceli*) culled from a captive herd maintained by Priour Brothers Ranch for enhancement of the species.

PRT–820896

Applicant: Fossil Rim Wildlife Center, Inc., Glen Rose, TX.

The applicant requests a permit to export three male captive-born cheetah (*Acinonyx jubatus*) to Werribee Zoo, Werribee, Victoria, Australia for the purpose of enhancement of the species through captive breeding.

PRT–820637

Applicant: Pittsburgh Zoological Park, Pittsburgh, PA.

The applicant requests a permit to export one female captive-born cotton-top tamarin (*Saguinus oedipus*) to the Biodome de Montreal, Montreal, Quebec, Canada for the purpose of enhancement of the species through captive breeding.

PRT–820640

Applicant: Larry Wells, Lings Mountain, NC.

The applicant requests a permit to import one captive-born pair of Cabot's tragopan (*Tragopan caboti*) from Mr. Glen Howe, Ontario, Canada for the purpose of enhancement of the species through captive breeding.

PRT–820865

Applicant: St. Paul's Como Zoo, St. Paul, MN.

The applicant requests a permit to import one captive-born, female snow leopard (*Uncia uncia*) from Calgary Zoo, Alberta, Canada, for enhancement of the survival of the species through captive breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 11, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–26659 Filed 10–16–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[ES–960–1420–00; ES–48258, Group 197, Florida]

Notice of Filing of Plat of Survey; Florida

The plat of the dependent resurvey of the east boundary, a portion of the west and north boundaries, a portion of the subdivisional lines, and the survey of the subdivision of sections 4, 8, 17, 20, 29 and 33 and the metes-and-bounds survey of certain parcels in sections 8 and 20, Township 12 South, Range 24 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on November 21, 1996.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., November 21, 1996.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: October 7, 1996.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 96–26611 Filed 10–16–96; 8:45 am]

BILLING CODE 4310–GJ–M

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of Restricted Joint Bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the Joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from November 1, 1996, through April 30, 1997. The List of Restricted Joint Bidders published April 10, 1996, in the Federal Register at 70 FR 15966 covered the period of May 1, 1996, through October 31, 1996.

Group I. Exxon Corporation; Exxon San Joaquin Production Co.

Group II. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.; Shell Frontier Oil & Gas Inc.; Shell Consolidated Energy Resources Inc.; Shell Land & Energy Company; Shell Onshore Ventures Inc.; GalResources LLC.

Group III. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group IV. BP America Inc.; The Standard Oil Co.; BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.

Dated: October 9, 1996.

Robert E. Brown,

Acting Director, Minerals Management Service.

[FR Doc. 96–26579 Filed 10–16–96; 8:45 am]

BILLING CODE 4310–MR–M

Request for Federal Outer Continental Shelf Lease Sale for Sand and Gravel Resources

AGENCY: Minerals Management Service (MMS). Interior.

ACTION: Extension of comment period for Request for Information and Interest (RFIN).

SUMMARY: This document extends to November 1, 1996, the deadline for submission of comments solicited under the RFIN published on May 21, 1996, (Federal Register, Vol. 61, No. 99, p. 25501). The original deadline for comments was July 20, 1996. The RFIN was issued in response to a request that MMS hold a competitive lease sale for Federal Outer Continental Shelf (OCS) sand and gravel resources. This request was made under provisions of MMS regulations specifically 30 CFR 281.11. The purpose of the RFIN is to determine whether additional interest exists in obtaining leases for sand and gravel resources on the OCS and to obtain other information that would be relevant to determining whether to proceed with the preparation of a comprehensive environmental impact analysis. MMS has extended the comment period in response to requests from citizens and elected officials for local meetings at which the leasing proposal would be explained in more detail to the public. Extension of the comment period allows for inclusion of statements from public meetings and any written comments that may follow.

DATES: All comments pertaining to the requested lease sale that have been submitted in writing in response to the RFIN or presented orally in town meetings and Congressional, or commission hearings to date will be considered. Any additional written comments that are received by November 1, 1996, will be fully considered as well.

ADDRESSES: Written comments can be submitted to: The Minerals Management Service, INTERMAR, 381 Elden Street, Mail Stop 4030, Herndon, Virginia, 20170–4817. FAX: (703) 787–1284. Attention: L. E. Bielak.

FOR FURTHER INFORMATION: Refer to Federal Register, Vol. 61. No. 99, p. 25501 or contact LeRon E. Bielak of MMS/INTERMAR at (703) 787–1292.

Dated: October 10, 1996.

Robert E. Brown,

Acting Director, Minerals Management Service.

[FR Doc. 96–26578 Filed 10–16–96; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

Notice of Acceptance of Concurrent Jurisdiction

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of jurisdiction changes on National Park Service (NPS) lands within Prince William County, Virginia. The State of Virginia ceded concurrent legislative jurisdiction over lands and waters, owned, leased or administratively controlled by the NPS within the boundaries of Prince William Forest Park and that portion of Manassas National Battlefield Park, located in Prince William County, Virginia.

EFFECTIVE DATE: Concurrent legislative jurisdiction, pursuant to the Deed of Cession discussed below, became effective on October 13, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, National Park Service, Washington, D.C. 20013–37127. Telephone 202–208–4874.

SUPPLEMENTARY INFORMATION: On October 13, 1995 a Deed of Cession was signed by the Governor of Virginia ceding legislative concurrent jurisdiction over lands and waters, owned, leased or administratively controlled by the NPS within the boundaries of Prince William Forest Park and that portion of Manassas National Battlefield Park, located in Prince William County, Virginia. The Deed of Cessation was subsequently recorded in the Clerk's Office of the Circuit Court of Prince William County in Manassas, Virginia on December 15, 1995. Acting upon a request from the NPS to convey concurrent jurisdiction over lands and waters situated within the administrative boundaries of the above mentioned Federal reserves, the Deed of Cession was signed by Governor George F. Allen and by Attorney General James S. Gilmore, III, pursuant to the authority conferred upon them by Section 7.1–21 (1988) of the Code of Virginia. The acceptance of cession of jurisdiction was signed by Roger G. Kennedy, Director of the National Park Service, Department of the Interior, pursuant to the authority conferred by 40 U.S.C. § 255.

Dated: October 10, 1996.

Chris Andress,

Chief, Ranger Activities Division, National Park Service.

[FR Doc. 96–26631 Filed 10–16–96; 8:45 am]

BILLING CODE 4310–70–P

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Wednesday, October 16, 1996; 1:30 p.m. until 4:30 p.m.

ADDRESSES: Easton City Hall Building, City Council Chambers, One South 3rd Street, 5th Floor, Easton, PA 18042.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: October 9, 1996.

Gerald R. Bastoni,

Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 96–26621 Filed 10–16–96; 8:45 am]

BILLING CODE 6820–PE–M

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act that the meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 7:30 p.m. (PDT) on Wednesday, October 16, 1996 at the Presidio Officers Club, Presidio of San Francisco, California and at 1:30 p.m. on Saturday, October 26, 1996 at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Naomi T. Gray
Mr. Michael Alexander
Ms. Lennie Roberts
Ms. Sonia Bolaños
Mr. Redmond Kernan
Mr. Merritt Robinson
Mr. John J. Spring
Mr. Joseph Williams
Ms. Amy Meyer, Vice Chair
Dr. Howard Cogswell
Mr. Jerry Friedman
Ms. Yvonne Lee
Mr. Trent Orr
Ms. Jacqueline Young
Mr. R. H. Sciaroni
Dr. Edgar Wayburn
Mr. Mel Lane

The main agenda item at the October 16th meeting will be possible Advisory Commission action on the Staff Report for the Presidio Golf Course Facilities. A presentation of the draft environmental assessment on the proposed Presidio Golf Clubhouse and Maintenance Facility was made before the Advisory Commission at the May 15, 1996 Advisory Commission meeting, and public comments were taken at the June 19, 1996 Advisory Commission meeting. The 30-day comment period on this assessment ended on June 21, 1996.

This meeting will also contain reports of committees and ad hoc committees, a Presidio General Manager's Report, and a GGNRA Superintendent's Report.

The October 26 public meeting at Point Reyes Station, California will contain updates on issues concerning management and planning at Point Reyes NS, including issues relating to proposal for use of structures at Laird's Landing, issues concerning the operation of Johnson's Oyster Company in Inverness, and the Dairy Waste Management and Reclamation Project at the Kehoe Ranch. This meeting will also contain reports of committees and ad hoc committees and a Point Reyes NS Superintendent's Report.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 556–4484. The time for the meetings at Point Reyes Station will be noticed to the public at least 15 days prior to these meetings.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: September 6, 1996.

Brian O'Neill,

General Superintendent.

[FR Doc. 96–26632 Filed 10–16–96; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Change in meeting dates.

SUMMARY: In notice document 96–24488 on page 50330 in the issue of Wednesday, September 25, 1996, [61 FR 50330] make the following corrections:

On page 5030 under **DATES**: In the first bullet the dates previously published in the Federal Register for CAG meetings scheduled were October 29–30, 1997. The dates have been changed to October 30–31, 1996. In the third bullet dates previously published in the Federal Register for CAG meeting scheduled were January 21–22, 1997. The dates have been changed to January 14–15, 1997. The time and place remain unchanged.

FOR FURTHER INFORMATION CONTACT: Walt Fite, Program Manager, Yakima River Water Enhancement Project, PO Box 1749, Yakima, Washington 98907; (509) 575–5848 ext. 267.

Dated: October 10, 1996.

James V. Cole,

Manager, Upper Columbia Area Office.

[FR Doc. 96–26626 Filed 10–16–96; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the Federal Register

notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first Federal Register Notice on this information collection request on August 9, 1996, in 61 FR 155, at which time a 60 calendar day comment period was announced. This comment period ended October 8, 1996. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527; 202/336–8565.

OMB Reviewer

Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503, 202/395–5871.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: Extension of a currently approved collection.

Title: Self Monitoring Questionnaire.

Form Number: OPIC–162.

Frequency of Use: Annually.

Type of Respondents: Business or other individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies assisted by OPIC.

Reporting Hours: 2 hours per form.

Number of Responses: 180 annually.

Federal Cost: $2,700 annually.

Authority for Information Collection: Section 231(k)2, of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: October 9, 1996.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 96–26534 Filed 10–16–96; 8:45 am]

BILLING CODE 3210–01–M

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the Federal Register notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. At OPIC's request, the Office of Management and Budget (OMB) is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420–0011.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 60 calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: Revised form.

Title: Application for Political Risk Investment Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 6 hours per project.

Number of Responses: 160 per year.

Federal Cost: $4,000 per year.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: October 11, 1996.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 96–26652 Filed 10–16–96; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on September 30, 1996, a proposed consent decree in the consolidated cases, *United States* v. *AlliedSignal, Inc.,* et al., Civil Action No. 92–2726 (SSB) and *Rollins Environmental Services (NJ) Inc.,* et al. v. *United States,* et al., Civil Action No. 92–1253 (SSB), was lodged with the United States District Court for the District of New Jersey. The claims in these civil actions relate to the Bridgeport Rental and Oil Services (''BROS'') Superfund Site (the ''Site'') in Logan Township, Gloucester County, New Jersey.

The proposed consent decree resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9601 *et seq.,* on behalf of the U.S. Environmental Protection Agency (''EPA''), against 89 corporations and other ''Settling Defendants'' and certain agencies of the State of New Jersey (the

''Settling State Agencies''). The proposed consent decree also resolves claims against the United States by the Settling Defendants and the State of New Jersey. In addition, the consent decree resolves claims by the State of New Jersey, Department of Environmental Protection (''NJDEP'') against Settling Defendants and claims by Settling Defendants against Settling State Agencies.

Under the terms of the consent decree, the Hazardous Substance Superfund will receive approximately $109 million, and NJDEP approximately $6.6 million, in satisfaction of liability pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for certain response costs previously incurred or to be incurred in connection with the Site. In addition, Settling Defendants will perform, subject to certain conditions, future response actions at the Site. The settlement embodied in the consent decree has a total value to the Hazardous Substance Superfund and NJDEP of at least $221.5 million in cash and response actions. Approximately $46.7 million of that amount will be paid by Settling Defendants and the balance by the United States on behalf of Settling Federal Agencies. The total value of the settlement could be higher, depending on the cost of certain response actions to be performed under the settlement.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. In addition, because the United States is further providing defendants with covenants not to sue under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, the United States will provide an opportunity for a public meeting in the affected area, if requested within the thirty (30) day public comment period. *See* 42 U.S.C. § 6973(d). Any comments and/or requests for a public meeting should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AlliedSignal, Inc.*, et al., Civil Action No. 92–2726, D.J. Ref. 90–11–2–422.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, Mitchell H. Cohen Courthouse, Fourth and Cooper Streets, Camden, New Jersey, 08101, at the Region II office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $71.75 payable to the Consent Decree Library for the 25 cent per page reproduction cost.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–26617 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR § 50.7, 38 Fed. Reg. 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on September 27, 1996, two proposed partial consent decrees in *United States* versus *Federal Pacific Electric Company, Inc. et. al.*, Civil Action No. 92–11924T, were lodged with the United States District Court for the District of Massachusetts. These two proposed consent decrees resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency (''EPA'') against defendants Cooper Industries, Inc., (''Cooper''), Federal Pacific Electric Company (''FPE''), and Cornell-Dubilier Electronics, Inc. (''CDE'') relating to the Norwood PCB Superfund Site in Norwood, Massachusetts.

Under the terms of the Consent Decree with Cooper, Cooper shall pay $7 million, including $6,940,000 in satisfaction of its liability for past and future response costs pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and $60,000 for civil penalties and punitive damages for failure to comply with an Administrative Order issued pursuant to Section 106 of CERCLA, 42 U.S.C. 9606 (the ''Administrative Order''). The Consent decree with CDE and FPE requires those parties to complete specified work at the Norwood PCB Superfund Site and to place $7.13 million in a trust fund to fund those remedial activities. The Consent Decree also requires CDE and FPE to pay $120,000 for civil penalties and punitive damages for failure to comply with the Administrative Order.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. In addition, since the United States is further providing defendants with covenants not to sue under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, the United States will provide an opportunity for a public meeting in the affected area, if requested within the thirty (30)day public comment period. *See* 42 U.S.C. § 6973(d). Any comments and/or requests for a public meeting should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Federal Pacific Electric Company, Inc., et. al.*, Civil Action No. 92–11924T, D.J. Ref. 90–11–2–372A.

Both proposed consent decrees may be examined at the Office of the United States Attorney, District of Massachusetts, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts, 02109, and at Region I, Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts, 02203 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of either proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please indicate which consent decree is desired and enclose a check (there is a 25 cent per page reproduction cost) in the amount of $12.00 for the Cooper Decree and/or a check in the amount of $113.00 for the CDE–FPE Decree payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–26609 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. § 9622(d)(2), notice is hereby given that on October 1, 1996, a Consent Decree was lodged in *United States* v. *Hercules, et al.*, Civil Action No. 89–562–SLR, with the United States District Court for the District of Delaware.

The Complaint in this case, as amended, was filed under Section 106 and 107 of the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. §§ 9606 and 9607, with respect to the Delaware Sand & Gravel Superfund Site (''DS&G Site'') located in New Castle County, Delaware, against numerous defendants, many of whom have agreed to settlement terms under prior consent decrees. Pursuant to the terms of the Consent Decree with Wilmington Fibre Specialty Company, the United States will receive a payment of $17,500 for costs incurred in connection with the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hercules, et al.*, Civil Action No. 89–562–SLR, Ref. No. 90–11–2–298. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Delaware, Chemical Bank Plaza, 1201 Market Street, Suite 100, Wilmington, Delaware 19899. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. When requesting a copy by mail, please enclose a check in the amount of $5.75 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–26618 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Hudson Foods, Inc.*, Civ. No. IP93–0692–C, was lodged with the United States District Court for the Southern District of Indiana, on September 24, 1996. That action was brought against defendant pursuant to the Clean Water Act (''the Act'') for penalties and injunctive relief for violations of section 307(d) of the Act, 33 U.S.C. § 1317(d), and wastewater pretreatment regulations promulgated thereunder, 40 CFR Part 403. The decree requires Hudson Foods, Inc. to pay $501,000 in civil penalties to the United States and to perform Supplemental Environmental Projects to facilitate pollution prevention and waste reduction at certain facilities of Hudson Foods, Inc.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Hudson Foods, Inc.*, D.J. Ref. 90–1–1–3894.

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of Indiana, U.S. Courthouse, Fifth Floor, 46 East Ohio Street, Indianapolis, Indiana 46204, at the Region V office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, N.W., 4th floor, Washington, D.C. 20005, telephone no. (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $6.00 for the decree (25 cents per page reproduction costs) payable to the consent Decree Library. When requesting a copy, please refer to *United States* v. *Hudson Foods, Inc.*, D.J. Ref. 90–5–1–1–3894.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–26614 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *Kaiser,* Civil Action No. 96C1743 was lodged on October 1, 1996 with the United States District Court for the Northern District of Illinois. The consent decree resolves the claims alleged against Jordan Kaiser, Walter Kaiser, Jeffrey S. Kaiser, Alfred Kleifield and Barbara Kleifield under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, (''CERCLA''). The proposed Consent Decree provides for the payment by these settling parties of $350,000 of the United States unrecovered response costs at the Danforth Corporation Site in Elk Grove Village, Illinois (the ''Site'').

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Kaiser,* DOJ Ref. # 90–2–966A.

The proposed consent decree may be examined at the office of the United States Attorney, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois: the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–26615 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Settlement Agreement, Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed Settlement Agreement in *In re Goodell,* No. 94–34248 (Bankr. W.D. Wash.), was lodged on September 25, 1996, with the United States Bankruptcy Court for the Western District of Washington. The Settlement Agreement resolves a general unsecured claim filed by the United States on behalf of the United States Environmental Protection Agency (''EPA'') in the *Goodell* bankruptcy pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*. Under the Settlement agreement, Land Sea Air Leasing Corporation (''LSA'') will

withdraw its objection to EPA's claim, and EPA will receive $70,000 for its claim.

The United States entered into the Settlement Agreement in connection with a Prospective Purchaser Agreement between EPA and Way Conn Properties, Inc. (''Way Conn''), an LSA affiliate. The Prospective Purchaser Agreement provides that Way Conn will remove all remaining contaminated soil from the property and pay EPA $200,000 subject to a $50,000 credit for every dollar Way Conn expends above $50,000 in soil removal and disposal for a maximum credit of $50,000. The 2.5 acre parcel of property subject to the Prospective Purchaser Agreement is the primary asset of the bankruptcy estate, and is located at the head of the Hylabos Waterway in the Commencement Bay/Near Shore Tideflats Superfund Site in Tacoma, Washington.

The Department of Justice will receive, for a period of fifteen (15) days from the date of this publication, comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re Goodell*, DOJ Ref. #90–11–2–1125.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, 800 Fifth Avenue, Seattle, Washington, 98104; the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98105; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–26610 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Partial Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Partial Consent Decree in *United States* v. *Perry Phillips, et al.*, Civil Action No. 95–5578 (E.D. Pa.), was lodged on September 27, 1996 with the United States District Court for the Eastern District of Pennsylvania. The proposed Partial Consent Decree resolves injunctive relief claims of the United States and the Commonwealth of Pennsylvania under the Safe Drinking Water Act (''Act'') in a Complaint filed September 6, 1995 against Perry Phillips and Jeanne Phillips doing business as the Perry Phillips Mobile Home Park, which owns and operates a water system for approximately sixty residents of the Perry Phillips Mobile Home Park near Coatesville, Pennsylvania. The Complaint alleged violations of the maximum contaminant levels set forth in regulations implementing the Act for several volatile organic compounds detected in the water system for the mobile home park.

The proposed Partial Consent Decree requires Perry and Jeanne Phillips to construct a groundwater remediation system, to sample for volatile organic compounds on a monthly basis, and to notify EPA, the Pennsylvania Department of Environmental Protection (''PADEP'') and the residents of the park of any violations of the Act or implementing regulations. The Partial Consent Decree reserves the rights of the United States and PADEP to seek a civil penalty at a later time.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Perry Phillips, et al.*, DOJ Ref. 90–5–1–1–4151.

The proposed Partial Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; the Region III Office of the Environmental Protection Agency, 941 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed Partial Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $9.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–26616 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 27, 1996 a proposed First Amended Consent Decree in *United States and State of California* v. *Shell Oil Company, Inc., et al.*, Case No. CV 91–0589 RJK(Ex) was lodged with the United States District Court for the Central District of California. This First Amended Consent Decree represents a settlement of claims against McAuley LCX Corporation (''McAuley'') for costs incurred in connection with the McColl Superfund Site (''Site'') in Fullerton, California under Section 107 of CERCLA, 42 U.S.C. § 9607.

Under this settlement between the United States and the State of California (''Plaintiffs'') and McAuley, McAuley will pay the United States Environmental Protection Agency (''EPA'') $184,000 for past United States response costs. The First Amended Consent Decree also requires McAuley to pay the State of California $66,000 for past State response costs.

A Consent Decree resolving claims against McAuley was previously lodged with the Court on December 1, 1995. However, subsequent to the lodging of that Consent Decree, EPA issued a Record of Decision (''ROD'') regarding the groundwater remedy at the Site. As a result, the earlier Consent Decree has been amended to ensure that McAuley does not take actions that would adversely affect the implementation of this remedial action. Additionally, the First Amended Consent Decree more specifically describes the matters addressed in the Covenant Not to Sue. This First Amended Consent Decree is similar in all other material respects to the Consent Decree lodged on December 1, 1995.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed First Amended Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and State*

of California v. *Shell Oil Company, Inc., et al.*, D.J. Ref. 90–11–2–3A.

The proposed First Amended Consent Decree may be examined at the Office of the United States Attorney, Central District of California, Room 7516, Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012 and at Region IX, Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree and exhibits thereto may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $9.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–26608 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 122–96]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice (DOJ), Drug Enforcement Administration (DEA), proposes to modify the following system of records previously published on June 9, 1994 (59 FR 29822): Investigative Reporting and Filing System, Justice/DEA–008.

Specifically, routine use (1) is being modified to permit State and local law enforcement agencies direct, ''read only'' electronic access to index date which was formerly accessed electronically by Federal law enforcement agencies only. Subpart B of the ''Categories of Records in the System'' has been modified to show that the index will permit law enforcement agencies to identify not only the existence of DEA case files as described in Subpart A, but also those of other law enforcement agencies, in order to request access to those files from the respective agency(s). Routine use (1) and the ''Retrievability'' section, respectively, show that other Federal, State, and local law enforcement agencies, together with DOJ law enforcement components, may have write access, but only to the index data generated by such agency or DOJ component to enable them to modify or delete their own date. Changes have been italicized.

Title 5 U.S.C. 552a(e)(4)(11) provide that the public be given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of any proposal to add new routine use disclosures or make other major modifications. Access to these records (both Subpart A, the case files, and Subpart B, the automated index) by State and local law enforcement agencies is not new; however, direct, electronic access to the automated index is new.

You may submit any comments (by 30 days from the publication date of this notice). The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: September 4, 1996.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/DEA–008

SYSTEM NAME:

Investigative Reporting and Filing System, Justice/DEA–008.

SYSTEM LOCATION:

Drug Enforcement Administration: 700 Army Navy Drive, Arlington, VA 22202; and field offices. For field office addresses, see appendix identified as ''DEA Appendix—List of Record Location Addresses, Justice/DEA–999.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Drug offenders

B. Alleged drug offenders; and

C. Persons suspected of drug offenses.

D. Defendants.

Such individuals may include individuals registered with DEA and responsible for the handling, dispensing, or manufacturing of controlled substances under the Comprehensive Drug Abuse Prevention and Control Act of 1970.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subpart A:

Subpart A is (1) a manual index (which serves as a backup to the automated index described in subpart B) and (2) paper case file records consisting of: Criminal Investigative Files; Regulatory Audit and Investigatory Files; and General Investigative Files. These files may include investigative and confidential informant reports and all documented findings and investigative ''lead'' information relative to preregistrant inspections, investigations, targeted conspiracies, and trafficking situations, etc. The reports pertain to the full range of DEA criminal drug enforcement and regulatory investigative functions that emanate from the Comprehensive Drug Prevention and Control Act of 1970.

For example, records in the Criminal Investigative Case Files may include a systematic gathering of information targeted on an individual or group of individuals operating in illegal drugs either in the United States or internationally; reports on individuals suspected or convicted of narcotics violations; reports of arrests; information on drug possession, sales, and purchases by such individuals; and information on the transport of such drugs, either inside the United States or internationally, by such individuals. Records in the Regulatory Audit and Investigatory Files may include similar investigative reports regarding those individuals specifically identified under item C. of the ''Categories of Individuals Covered by the System.'' Records in the General Investigative Files may generally include fragmentary or low priority information on an individual which is not significant enough to open a case file.

Subpart B:

Subpart B is an automated index containing limited, summary-type data which are extracted from and which point to the case files *maintained by DEA as described in subpart A above, or to files maintained by other Federal, State, or local law enforcement agencies.* Examples of such data include: Record number; subject name (person, business, vessel), aliases and soundex; personal data; (occupation(s), race, sex, date and place of birth, height, weight, hair color, eye color, citizenship, nationality/ethnicity, alien status); special considerations (fugitive armed/dangerous); resident and criminal address (business and personal); miscellaneous numbers (telephone, passport, drivers license, vehicles registration, social security number, etc.); relevant case file numbers, with indicators for active investigations; date/stamp (event) data. (Subpart B will contain no classified information.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained to enable DEA to carry out its assigned law enforcement and criminal regulatory functions under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91–513), Reorganization Plan No. 2 of 1973, and Title 21 United States Code; and to fulfill United States obligations under the Single Convention on Narcotic Drugs.

PURPOSE:

The records in this system have been compiled for the purpose of identifying, apprehending, and prosecuting individuals connected in any way with the illegal manufacture, distribution, or use of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant records or any relevant facts derived therefrom may be disclosed to:

(1) Other Federal, State, local, and foreign law enforcement and regulatory agencies, and components thereof, to support their role in the detection and monitoring of the distribution of illegal drugs in the United States or such other roles in support of counterdrug law enforcement as may be permitted by law. *Direct, electronic, ''read only'' access by Federal, State, or local law enforcement agencies only to Subpart B of this system of records may be permitted to enable these agencies (i) to identify law enforcement information or activities which may be relevant to their law enforcement responsibilities and (ii) where such information or activities is identified, either request access from DEA to the underlying case file records described in Subpart A or, where the case file is maintained by another agency, request access from such other agency, and (iii) to ensure appropriate coordination of such activities with DEA or other appropriate law enforcement agency. In addition, direct, electronic, read and write access may be permitted, but only to the index data generated by the accessing agency to enable such agency to modify or deleted its own data.*

(2) Other Federal, State, local, and foreign law enforcement and regulatory agencies, and components thereof, to the extent necessary to elicit information pertinent to counter-drug law enforcement; (3) Foreign law enforcement agencies through the Department of State (with whom DEA maintains liaison), and agencies of the U.S. foreign intelligence community to further the efforts of those agencies with respect to the national security and foreign affairs aspects of international drug trafficking; (4) individuals and organizations in the course of investigations to the extent necessary to elicit information about suspected or known illegal drug violators; (5) Federal and state regulatory agencies responsible for the licensing or certification of individuals in the fields of pharmacy and medicine to assist them in carrying out such licensing or certification functions; (6) any person or entity to the extent necessary to prevent an imminent or potential crime which directly threatens loss of life or serious bodily injury; (7) news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (8) a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; (9) National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; and (10) to a court or adjudicative body before which DEA is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by DEA to be arguably relevant to the litigation; (i) DEA, or any subdivision thereof, or (ii) any employee of DEA in his or her official capacity, or (iii) any employee of DEA in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv) the United States, where DEA determines that the litigation is likely to affect it or any of its subdivisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records described in subpart A of the ''Categories of Records in the System'' are maintained on standard index cards and in standard file folders at DEA Headquarters and field offices. Records described in subpart B are stored on a computer database at the DEA and on a mainframe at the Department of Justice Computer Center.

RETRIEVABILITY:

Information will be retrieved by accessing either the manual or automated index by name and by cross-referencing the name with a number assigned to the case file. The law enforcement components of the Department of Justice may have direct, electronic, ''read only'' access (under subsection (b)(1) of the Privacy Act) to subpart B of the ''Categories of Records in the System''. These data will assist DOJ law enforcement components in identifying whether there may be detailed records which reside in subpart A of this system of records that may be relevant to their law enforcement responsibilities. Where such records are identified, DOJ law enforcement components may request access. *In addition, DOJ law enforcement components may have direct, electronic ''read and write'' access to the index data generated by such component to modify or delete its own data.*

SAFEGUARDS:

Access is limited to designated employees with a need-to-know. All records are stored in a secure area of a secure building. In addition to controlled access to the building, the areas where records are kept are either attended by responsible DEA employees, guarded by security guard, and/or protected by electronic surveillance and/or alarm systems, as appropriated. In addition, paper records, including the manual index, are in locked files during off-duty hours and unauthorized access to the automated index is also prevented through state-of-the-art technology such as encryption and multiple user ID's and passwords.

RETENTION AND DISPOSAL:

Paper records will be transferred to the Washington National Records Center 10 years after date of last entry; and destroyed 25 years after date of last entry. The related index will be deleted 25 years after date of last entry. Approval pending DEA records management and the NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator, Operations Division, Drug Enforcement Administration, Freedom of Information Section, Washington, D.C. 20537.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to: Drug Enforcement Administration, Freedom of Information Section, Washington, D.C. 20537.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORDS PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

(a) DEA personnel, (b) Confidential informants, witnesses and other

cooperating individuals, (c) Suspects and defendants, (d) Federal, State and local law enforcement and regulatory agencies, (e) foreign law enforcement agencies, (f) business records by subpoena, and (g) drug and chemical companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e) (1), (2) and (3), (e)(5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). In addition, the system has been exempted from subsections (c)(3), (d), and (e)(1), pursuant to subsection (k)(1). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 96–26284 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–09–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Display Consortium

Notice is hereby given that, on January 1, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Display Consortium (''ADC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Electro-Plasma Inc., Milbury, OH; OIS Optical Imaging Systems, Troy, MI; Photonics Imaging, Northwood, OH; Planar Systems, Inc., Beaverton, OR; Kent Display Systems, Kent, OH; Standish Industries, Inc., Lake Mills, WI; Three-Five Systems, Tempte, AZ, and FED Corp., Hopewell Junction, NY. The general area of planned activity is to engage in cooperative research to develop technology applicable to the design, production, testing and manufacture of advanced displays.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–26606 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Research Consortium on Non-Heat Treatable Auto Body Sheet

Notice is hereby given that, on April 26, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The American Society of Mechanical Engineers, as Administrator for the Research Consortium on Non-Heat Treatable Auto Body Sheet (''the Consortium'') has failed written notifications simultaneously with the Attorney General and the Federal Trade Commission on behalf of itself and the Consortium's members disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: ARCO Aluminum, Inc., Louisville, KY; Commonwealth Aluminum, Lewisport, KY, and; Ravenswood Aluminum Co., Ravenswood, WV. The nature and objective of the Consortium is to provide a national focus for identifying and resolving technical issues concerned with the development of non-heat treatable auto body sheet. To accomplish that purpose the members of the Consortium may: (1) Collect and exchange technical information; (2) assess the current state of knowledge and identify information gaps; (3) evaluate the adequacy of research or technology development programs of government and industry, and recommend appropriate actions; (4) evaluate the adequacy of current available instrumentation equipment or applications software, and encourage improvements; (5) advance technical capabilities by planning, organizing, and raising funds for and managing commissioned studies and/or laboratory research; (6) interact with public and private organizations, and; (7) foster the development of appropriate standards.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–26607 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Seed Research Services, LLC

Notice is hereby given that, on September 19, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301, *et seq.* (''the Act''), Seed Research Services, LLC, a California Limited Liability Company, has filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the current parties in the venture are: first, California Artichoke and Vegetable Growers Corp., dba Ocean Mist Farms, a California corporation, and member of Seed Research Services, LLC, whose shareholders consist of: Boutonnet Farms, Inc., a California Corporation; Sea Mist Farms, LLC, a California Limited Liability Company; Bengard Harvesting, a California General Partnership; Joy Al, Inc., a California Corporation; Donnar, Inc., a California Corporation; Tottino Living Trust, Hugo and Delores Tottino, Trustees, a California Trust; and the following U.S. citizens and California residents: Leslie Tottino; David Tottino; Karen Antle; Cathy Alameda; and Michelle Pecci; second, Associated Produce Distributors, a California Limited Partnership, and member of Seed Research Services, LLC, whose general partners consist of: Lael Lee Co., a California General Partnership; B.W. Brown Co., a California General Partnership; A.P. Generals, a California General Partnership; and a U.S. citizen and California resident, Reno Costella; and third, Adobe Ranch Company, a California General Partnership and member of Seed Research Services, LLC, whose general partners consist of the following U.S. citizens and California residents: Louis H. Delfino; David N. Delfino; and Louis J. Delfino.

The general area of planned activity for Seed Research Services, LLC is seed and plant research, development and licensing of proprietary varieties of artichokes to its Members and/or third parties, and may also include the production of proprietary seed and/or plants. The principal executive office of Seed Research Services, LLC is located at 450 Lincoln Avenue, Salinas, CA 93902.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–26613 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Durability and Life Assessment of GTD–111 Buckets

Notice is hereby given that, on October 31, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are ARCO Alaska, Inc., Anchorage, AK; Exxon Research and Engineering Company, Florham Park, NJ; and, Mobil Exploration & Producing Technical Center, a unit of Mobil Research & Development Corporation, Dallas, TX. The general areas of planned activities are to develop the necessary technology to assess the life of coated gas turbine buckets made from GTD–111 as used in the General Electric line of gas turbines by defining and quantifying the rate of the actual degradation; by developing the properties of these buckets; by developing a life assessment methodology and software program to determine the conditions of the buckets; and by developing nondestructive evaluation (NDE) methods for assessing the coatings. The focus of the program is on the model MS5002 gas turbine.

Membership in the program remains open, and SwRI intends to file additional written notifications disclosing all changes in the membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–26605 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[DEA #153P]

Controlled Substances: Proposed Aggregate Production Quotas for 1997

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed aggregate production quotas for 1997.

SUMMARY: This notice proposes initial 1997 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATES: Comments or objections should be received on or before November 18, 1996.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537; Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) the estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1997 aggregate production quotas, the Deputy Administrator considered the following factors: (1) total actual 1995 and estimated 1996 and 1997 net disposals of each substance by all manufacturers; (2) estimates of 1996 year end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; (3) product development requirements of both bulk and finished dosage form manufacturers; (4) projected demand as indicated by procurement quota applications filed pursuant to Section 1303.12 of Title 21 of the Code of Federal Regulations and (5) other pertinent information.

Pursuant to Section 1303.23(c) of Title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 1997, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 1996 year-end inventory and actual 1996 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator by Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes that the aggregate production quotas for 1997 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Proposed 1997 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	15,200,100
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
3-Methylfentanyl	14
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	22
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	27
3,4-Methylenedioxymethamphetamine (MDMA)	7
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	17
4-Methylaminorex	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2

Basic class	Proposed 1997 quotas
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-methylfentanyl	2
Acetylmethadol	7
Alpha-acetylmethadol	7
Alpha-ethyltryptamine	2
Alpha-methadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	7
Beta-acetylmethadol	2
Beta-hydroxyfentanyl	2
Beta-hydroxy-3-methylfentanyl	2
Beta-methadol	2
Bufotenine	2
Cathinone	9
Codenine-N-oxide	2
Difenoxin	14,000
Dihydromorphine	7
Ethylamine Analog of PCP	5
Heroin	2
Lysergic acid diethylamide (LSD)	27
Mescaline	7
Methaqualone	17
Methcathinone	11
Morphine-N-oxide	2
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
N,N-Dimethyltryptamine	7
Norlevorphanol	2
Normethadone	7
Normorphine	7
Para-fluorofentanyl	2
Pholcodine	2
Psilocin	2
Psilocybin	2
Tetrahydrocannibinols	25,100
Thiofentanyl	2
Thiophene Analog of Phencyclidine	5
Schedule II:	
1-Phenylcyclohexylamine	10
1-Piperidinocyclohexanecarbonitrile (PCC)	12
Alfentanil	9,300
Amobarbital	15
Amphetamine	2,968,000
Carfentanil	500
Cocaine	550,100
Codeine (for sale)	49,103,000
Codeine (for conversion)	19,679,000
Desoxyephedrine	1,422,000
1,361,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 61,000 grams for methamphetamine.	
Dextropropoxyphene	116,469,000
Dihydrocodeine	255,100
Diphenoxylate	701,000
Ecogonine (for conversion)	651,000
Ethylmorphine	12
Fentanyl	137,000
Glutethimide	2
Hydrocodone (for sale)	13,891,000
Hydrocodone (for conversion)	1,769,000
Hydromorphone	563,000
Isomethadone	12
Levo-alpha-acetylmethadol (LAAM)	200,100
Levomethorphan	2
Levorphanol	16,400
Meperidine	9,843,000
Methadone (for sale)	3,729,000
Methadone (for conversion)	364,000
Methadone Intermediate (for conversion)	4,295,000
Methamphetamine (for conversion)	723,000
Methylphenidate	13,824,000
Morphine (for sale)	11,126,000

Basic class	Proposed 1997 quotas
Morphine (for conversion)	68,165,000
Noroxymorphone (for conversion)	2,000,000
Opium	937,000
Oxycodone (for sale)	5,589,000
Oxycodone (for conversion)	1,200
Oxymorphone	9,000
Pentobarbital	16,772,000
Phencyclidine	60
Phenmetrazine	2
Phenylacetone	10
Secobarbital	491,000
Sufentanil	1,000
Thebaine	9,325,000

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: October 10, 1996.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 96–26581 Filed 10–16–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10150, et al.]

Proposed Exemptions; Smith Barney Shearson Prototype

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of

Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Smith Barney Shearson Prototype, Defined Contribution Plan (the Plan), Located in Los Angeles, California

[Application No. D–10150]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past acquisition, holding, and exercise by the Plan of certain stock purchase rights (the Rights),[1] which were issued by the Highland Federal Bank (the Employer) to all shareholders of record, as of November 7, 1995, of common stock of the Employer (the Employer Stock) pursuant to a rights offering (the Rights Offering), provided that the following conditions were satisfied:

(a) The Plan's acquisition and holding of the Rights in connection with the Rights Offering occurred as a result of an independent act of the Employer as a corporate entity;

(b) All holders of the Employer stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering; and

(c) The acquisition, holding, and disposition of the Rights by the affected participant accounts in the Plan occurred in accordance with Plan provisions for the individually directed investment of such accounts.

EFFECTIVE DATE: This exemption, if granted, will be effective for the period from November 8, 1995 to December 15, 1995.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with a 401(k) feature adopted by the Employer. The Employer is a Federal savings bank headquartered in Los Angeles, California. Effective January 1, 1995, the previous plan maintained by the Employer was amended and restated as the current Plan to provide for individually directed accounts. As of September 30, 1995, the Plan had total assets of $2,416,827. As of December 31, 1994, the Plan had approximately 94 participants and beneficiaries. The trustee of the Plan is Smith Barney Corporate Trust Company (the Trustee).

2. Among the assets of the Plan is the Employer Stock. The Employer Stock began to trade on the SmallCap Market of the National Association of Securities Dealers Automated Quotation Stock Market, Inc. (NASDAQ) as of October 16, 1995, under the symbol ''HBNK,'' and was approved for quotation in the NASDAQ National Market System as of December 29, 1995. The trustees of the previous plan made the decision to invest a portion of plan assets in the Employer Stock. The Employer Stock was carried over to the Plan and is now held under the individual accounts of those participants with an interest in the Employer Stock (the Invested Participants). As of December 31, 1994, the Plan had 92 Invested Participants. Participants are no longer permitted to invest in the Employer Stock. The only action that Invested Participants can take with respect to the Employer Stock is to sell such stock and to direct the Trustee as to the investment of the sale proceeds in one or more of the six funds that comprise the investment options currently available to participants. As of November 7, 1995 (the Record Date), there were issued an outstanding 1,105,000 shares of the Employer Stock. As of that date, the Plan held 21,436 shares of the Employer Stock at $13.25 per share (a total of $284,027), or about two percent of all outstanding shares.

3. The Employer, as a means of raising capital needed to promote its business plan and to support future growth, made a Rights Offering to its shareholders. The Rights Offering commenced on November 8, 1995 with the issuance by the Employer to all its shareholders of record as of the close of business on the Record Date (the Record Date Shareholders) transferable subscription Rights in the ratio of one Right for every 1.105 shares of the Employer Stock held. The number of Rights actually issued to each Record Date Shareholder was rounded up to the nearest whole Right. It is represented that the Rights Offering was an independent act of the Employer as a corporate entity and that all holders of the Employer Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering.

Each Right conferred upon its holder an entitlement (the Basic Privilege) to purchase one additional share of the Employer Stock at a subscription price of $12 per share (the Subscription Price). Each Right also conferred upon its holder a second privilege (the Oversubscription Privilege) allowing each Rights holder exercising the Basic Privilege in full to subscribe for an unlimited number of additional shares of the Employer Stock (the Excess Shares), also at $12 per share, subject to availability after satisfaction of subscriptions made pursuant to the Basic Privilege. If the number of Excess Shares was insufficient to satisfy all exercises of the Oversubscription Privilege, the Excess Shares were to be allocated on a pro rata basis in accordance with the number of shares of the Employer Stock owned as of the Record Date by each Rights holder who exercised the Oversubscription Privilege. Any exercise of the Oversubscription Privilege had to occur at the same time that the Basic Privilege was exercised. Once the Basic Privilege or the Oversubscription Privilege was exercised, such exercise could not be revoked. The Rights Offering was announced to expire at 5 p.m., Pacific Time, on December 15, 1995 (the Expiration Time), at which time no further exercises of Rights could occur.

While the Basic Privilege under the Rights was generally transferable, the Oversubscription Privilege was not transferable. The Rights traded on the SmallCap Market of NASDAQ under the symbol ''HBNKR'' until the close of trading on December 14, 1995, the date prior to the expiration date of the Rights Offering. The Employer had authorized the issuance of up to 1,700,500 additional shares of the Employer Stock, for a total of 2,805,500 outstanding shares if the maximum number of additional shares were sold. Payments of the Subscription Price for the purchase of the Employer Stock pursuant to the exercise of the Rights were held in an escrow account maintained by First Interstate Bank of California as the subscription agent (the Subscription Agent) pursuant to an Escrow Agreement with the Employer. The Rights Offering was conditioned upon the receipt of minimum proceeds of $12 million pursuant to the exercise of Rights and from standby purchasers[2]

[1] The Department notes that the Rights do not constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act.

[2] The Employer had standby purchase agreements with certain outside investors, who severally agreed to commit to purchasing a specified number of shares of the Employer Stock at the Subscription Price, subject to availability after satisfaction of exercises by Rights holders of the Basic Privilege and the Oversubscription Privilege. The standby

Continued

prior to the Expiration Time, which minimum condition was achieved.[3]

4. It is represented that the acquisition, holding, and disposition of the Rights by the affected participant accounts in the Plan occurred in accordance with Plan provisions for the individually directed investment of such accounts. In anticipation of the Rights Offering, the trust agreement (the Trust Agreement) of the Plan was amended in order to permit Invested Participants as of the Record Date to direct the Trustee either to exercise or sell the Rights attributable to their accounts, and such amendments also established the procedures for making such directions. Due to the amendments to the Trust Agreement and, consequently, the conversion of the Plan from a prototype plan into an individually designed plan, the Employer has submitted the Plan to the Internal Revenue Service for its determination on the qualification of the Plan as an individually designed plan.

5. It is further represented that on November 8, 1995 all Invested Participants received by hand delivery a packet of information pertaining to the Rights Offering, which included: (i) a copy of the Rights Offering Circular published by the Employer; (ii) a notice from the Trustee describing the procedures for participant directions with respect to the Rights Offering; (iii) a direction form (the Direction Form); and (iv) a Statement of Benefits for the quarter ending September 30, 1995, containing information regarding the number of shares of the Employer Stock allocated to each Invested Participant under his or her individual account, as well as the number of Rights issued to each in proportion to the number of shares of the Employer Stock held. As of November 8, 1995, the Employer had also furnished all other Record Date Shareholders with information regarding the Rights Offering by mail.

6. The Direction Form provided to Invested Participants enabled them to direct the Trustee either (i) to exercise the Rights allocated to their respective accounts, or (ii) to sell the Rights on the open market. In order to allow the Trustee sufficient time to carry out the administrative procedures required to review the Direction Forms of the Invested Participants and to implement such directions, Invested Participants had to return a properly completed form to the Trustee by 5:00 p.m., Pacific Time, on December 1, 1995 (i.e., 10 business days before the expiration date of the Rights Offering). Invested Participants who failed to return a timely and properly completed Direction Form to the Trustee were deemed to have directed the Trustee to sell their respective Rights on the open market.

Invested Participants who directed the Trustee to exercise their Rights had to specify the order in which to liquidate their other Plan investments, if necessary, to obtain the funds for the payment of the Subscription Price. If an Invested Participant failed so to specify, the Trustee would automatically liquidate such investments in the following order: (i) Stable Value Fund; (ii) Balanced Fund; (iii) Large Value Equity Fund; (iv) Large Growth Fund; (v) Small Growth Fund; and (vi) International Equity Fund. Invested Participants also had to specify the order in which to liquidate within each investment fund the following types of contributions: profit-sharing contributions, elective deferrals, employer matching contributions, qualified matching contributions, or rollover contributions. If an Invested Participant failed so to specify, the Trustee would automatically liquidate each investment fund from the following order of contributions: (i) Rollover contributions; (ii) profit sharing contributions; (iii) employer matching contributions; (iv) qualified matching contributions; and (v) elective deferrals. The Trustee would exercise Rights only to the extent of the funds available in the Invested Participant's account. Thus, if an Invested Participant had insufficient funds to pay the Subscription Price for all of the shares of the Employer Stock subscribed for, the Trustee would attempt to sell any Rights not exercised on the open market.

7. Once the Trustee obtained the funds necessary for the payment of the Subscription Price, the Trustee would transfer such funds to the Reserve Deposit Account in the Plan, pending a transfer to the Subscription Agent. Once the Subscription Agent purchased the Employer Stock pursuant to an exercise of Rights by an Invested Participant, the Trustee would allocate the newly acquired shares of the Employer Stock to the account of the Invested Participant from which the funds had been obtained.

In the event that the market price for the Employer Stock, including the effect of any applicable brokerage commissions and other expenses, was less than the Subscription Price at the time the Trustee was to exercise the Rights pursuant to such election by an Invested Participant, the Trustee was not to exercise such Rights. It is represented that on December 15, 1995, the expiration date of the Rights Offering and the date on which the Trustee exercised Rights on behalf of the Invested Participants so directing the exercise of their Rights, the Subscription Price was less than the market price for a share of the Employer Stock on NASDAQ,[4] after giving effect to any applicable brokerage commissions and other expenses.

All sales of Rights by Invested Participants were to be executed by Sandler O'Neal & Partners, L.P., the Employer's financial advisor for the Rights Offering (the Financial Advisor), at the market price per Right. Neither the Trustee nor the Financial Advisor were to charge any commissions or other fees in connection with the sale of Rights. The proceeds from the sale of any Rights were to be deposited in the accounts of the Invested Participants in proportion to the number of Rights they elected to sell, to be invested in accordance with their then current investment selections.

However, the Trustee inadvertently did not follow the Invested Participants' directions with respect to the sale or exercise of their Rights within the time frame established by the Rights Offering Circular. When the Trustee discovered that the Rights Offering had expired, it took immediate steps to make the Plan whole. Accordingly, on January 22, 1996, the Trustee paid $2,111.31 to the Plan.

8. The Employer represents that the following is a summary of the Rights Offering. As of the Record Date, the total number of shares of Employer Stock outstanding prior to the Rights Offering was 1,105,000, of which approximately 21,436 shares, or approximately two percent were held by the Plan. The Rights issued to the Plan pursuant to the Rights Offering were allocated to the account of each Invested Participant for his or her direction on the exercise or sale of such Rights. The Rights, as listed on NASDAQ, were initially valued at ⅛

purchase agreements have no bearing on this proposed exemption.

[3] The Employer was not required to issue shares of the Employer Stock pursuant to the Rights Offering to any Rights holder or standby purchaser who, in the Employer's sole judgment and discretion, was required to obtain prior clearance, approval, or non disapproval from any Federal bank regulatory authority to own or control such shares, unless prior to the expiration time, evidence of such clearance, approval, or nondisapproval had been provided to the Employer. This regulatory limitation had no bearing on this proposed exemption because it was not possible for the relatively small number of shares of the Employer Stock available for purchase by the Invested Participants to trigger the regulatory limitation on purchases described in the Rights Offering Circular.

[4] As of December 15, 1995, the closing price of the Employer Stock, as quoted on NASDAQ, was $12.25 per share.

per Right on November 21, 1995 and at 1/64 per Right on December 14, 1995, the date prior to the expiration date of the Rights Offering. Ninety of the Invested Participants elected to sell their Rights, a total of 19,117 Rights. The market price of such Rights on December 4, 1995, the date on which such Rights should have been sold, was 1/16 per Right. Two of the Invested Participants elected to exercise their Rights pursuant to the Basic Privilege, a total of 282 Rights. No Invested Participants elected to exercise the Oversubscription Privilege.

The total number of shares of the Employer Stock outstanding after the Rights Offering was 2,295,983, an increase of 1,190,983 shares. Of these additional 1,190,983 shares, approximately 190,983 were sold to shareholders upon exercise of their Rights, or to investors who purchased the Rights on the open market, and the other 1,000,000 shares were sold to outside investors pursuant to certain standby purchase agreements.

9. In summary, the applicant represents that the transactions satisfied the criteria for an exemption under section 408(a) of the Act for the following reasons: (1) The Plan's acquisition and holding of the Rights in connection with the Rights Offering occurred as a result of an independent act of the Employer as a corporate entity; (2) all holders of the Employer Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering; (3) the acquisition, holding, and disposition of the Rights by the affected participant accounts occurred in accordance with Plan provisions for the individually directed investment of such accounts; and (4) the Invested Participants' accounts held only approximately two percent of the Employer Stock outstanding as of the Record Date.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons, and all employee organizations in which they are members, by personal delivery, by first-class mail, or by posting in the Employer's offices within 15 days of the date of publication of the notice of pendency in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 45 days of the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

John A. Colglazier Self Employment Retirement Plan (the Plan), Located in San Antonio, TX

[Application No. D–10291]

Proposed Exemption and Replacement of Exemption

The Department is proposing to grant a new exemption that will replace Prohibited Transaction Exemption (PTE) 86–95 (51 FR 26077, July 18, 1986). Authority to grant the proposed exemption and to replace PTE 86–95 is given to the Department under section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

If the proposed exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, will not apply to the cash sale by the Plan, for $74,250, of a parcel of unimproved real property (the Property) to John A. Colglazier, a sole proprietor and a disqualified person with respect to the Plan.[5]

This proposed exemption is subject to the following conditions:

(a) The sale is a one-time transaction for cash that is entered into within 90 days following the publication, in the Federal Register, of the notice granting the proposed exemption.

(b) The Plan does not pay any real estate fees or commissions in connection with the sale.

(c) The Property is appraised by a qualified, independent appraiser.

(d) The Plan receives, as consideration, an amount that is equal to the greater of $74,250 or the fair market value of the Property as of the date of the sale, including any special value attributed to the Property by reason of its proximity to other real property (the Adjoining Properties) owned by Mr. Colglazier.

(e) All terms and conditions of the sale remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party at the time of the sale.

Temporary Nature of Exemption/Effective Date

This proposed exemption, if granted, will be effective for a period of 90 days subsequent to the date the grant notice is published in the Federal Register.

Preamble

This proposed exemption is requested in an application filed with the Department by Mr. Colglazier. The application updates the facts and representations contained in PTE 86–95 which would have permitted the Plan to sell the Property to Mr. Colglazier. The transaction was never consummated due to declining real estate values which resulted in Mr. Colglazier's inability to obtain financing. In view of the passage of time and certain factual changes, the Department believes that it is necessary to replace PTE 86–95 by reproposing the requested exemption in a form which accurately reflects the current facts and circumstances.

Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan and the successor to another plan that was originally established in 1983. The Plan, including its predecessor, has always had one participant, John A. Colglazier. Mr. Colglazier, a sole proprietor engaged in the commercial and investment real estate business in San Antonio, Texas, serves as the Plan trustee and the decisionmaker with respect to the Plan's investments. As of March 31, 1996, the Plan had total assets of $98,487.

2. Among the assets of the Plan[6] is a parcel of real property consisting of 1.0307 acres of unimproved land located in the northeast corner of the intersection of Mesquite and Duval Streets in San Antonio, Bexar County, Texas. The Property is in close proximity to the Adjoining Properties that are owned by Mr. Colglazier.

3. The Plan purchased the Property on October 1, 1985 from William Cole Butler, an unrelated party, for a purchase price of $2.80 per square foot plus $101 in charges, or a total acquisition price of $126,093.94. At no time has the Property ever been encumbered by a mortgage or a deed of trust.

4. Since it has owned the Property, the Plan has incurred total costs and real estate taxes of approximately $24,059. The Plan has also leased the Property to Conex Construction, Inc., an unrelated party, but never to a disqualified person. The subject lease, which commenced on November 1, 1989 and expired on October 15, 1990, required the lessee to pay a monthly rental of $200.

5. At the time the Property was purchased by the Plan, it is represented

[5] Because Mr. Colglazier is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[6] Unless otherwise noted, references to the Plan include its predecessor.

that Mr. Colglazier, as Plan trustee, intended to develop the Property with a warehouse that would be constructed thereon and used for commercial rental. Soon after closing the sale, Mr. Colglazier realized that the Plan did not have sufficient assets to construct the warehouse and considered obtaining third party financing to realize this objective. However, after exploring various options, Mr. Colglazier decided that it would be more appropriate to purchase the Property from the Plan. Therefore, on advice of counsel, Mr. Colglazier applied to the Department for an administrative exemption.

6. On July 18, 1986, the Department granted PTE 86–95 which would have permitted the Plan to sell the Property to Mr. Colglazier for cash, for the higher of the fair market value of the Property or $146,000. Although Mr. Colglazier was ready to complete the sale following the granting of PTE 86–95, he was unable to obtain the necessary financing because the real estate market had collapsed in Texas. Therefore, Mr. Colglazier never utilized PTE 86–95.

7. On February 7, 1996, Mr. Colglazier purchased the Adjoining Properties from Flo-Line Filters, Inc., an unrelated party for a total purchase price of $37,500. The Adjoining Properties consist of two parcels of vacant land. One of the parcels is located on Austin Street and Duval Street and contains 0.7059 acres. The other parcel is located on Mesquite Street and Brooks Street and contains 0.2473 acres.

It is represented that Mr. Colglazier decided to purchase the Adjoining Properties because it would allow him to construct a larger warehouse, when combined with the Property. Also, it is represented that one of the Adjoining Properties has frontage on a freeway and Mr. Colglazier believes that this factor will enhance his ability to sell all of the Properties as one tract if he decides not to construct the warehouse. However, at this time, Mr. Colglazier intends to construct the warehouse to provide income for his retirement.

8. The Property has been appraised by Richard L. Dugger, MAI, CRE, a qualified, independent appraiser. In an appraisal report dated May 14, 1996, Mr. Dugger has placed the fair market value of the Property at $67,500 as of April 19, 1996. In valuing the Property, Mr. Dugger has considered comparable sales of other properties.

In an addendum to the appraisal dated July 17, 1996, Mr. Dugger has determined that the Property has nominal, incremental value by reason of Mr. Colglazier's ownership of the Adjoining Properties. According to Mr. Dugger, the incremental value is nominal since there has been very limited development activity in the San Antonio area for many years. Mr. Dugger concludes that the intrinsic value of the Property to Mr. Colglazier is approximately 10 percent above the market value of $67,500 or $74,250.

9. Accordingly, Mr. Colglazier requests an administrative exemption from the Department in order to purchase the Property from the Plan. The new exemption is being requested in view of changed circumstances that would render PTE 86–95 invalid. As discussed above, these factual changes are (a) Mr. Colglazier's acquisition of the Adjoining Properties and (b) the special value attributed to the Property by Mr. Dugger as a result of such Adjoining Property acquisition. If granted, the new exemption will replace PTE 86–95.

10. Mr. Colglazier proposes to purchase the Property from the Plan for cash for a price that is equal to the greater of $74,250 or the fair market value of the Property on the date of the sale, including any special value attributed to the Property by reason of its proximity to the Adjoining Properties. The Plan will not incur any fees, commissions, expenses or other costs in connection with the sale. In addition, the transaction must be entered into within 90 days following the publication, in the Federal Register, of the notice granting the proposed exemption.

11. In summary, it is represented that the proposed transaction will satisfy the terms and conditions of section 4975(c)(2) of the Code because: (a) The sale will be a one-time transaction for cash that must be entered into within 90 days following the publication, in the Federal Register, of the notice granting the proposed exemption; (b) the Plan will not pay any real estate fees or commissions in connection with the sale; (c) the Property has been appraised by a qualified, independent appraiser; (d) the Plan will receive as consideration an amount that is equal to the greater of $74,250 or the fair market value of the Property as of the date of the sale, including any special value attributed to the Property by reason of its proximity to the Adjoining Properties; and (e) all terms and conditions of the sale will remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party at the time of the sale.

Notice to Interested Persons

Because Mr. Colglazier is the only person in the Plan who will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of pendency to interested persons. Therefore, comments and requests for a hearing are due 30 days from the publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of October, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–26602 Filed 10–16–96; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 96–76; Exemption Application No. D–09915, et al.]

Grant of Individual Exemptions; Teachers Insurance and Annuity

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Teachers Insurance and Annuity Association of America (TIAA) Located in New York, New York

[Prohibited Transaction Exemption 96–76 Exemption Application No. D–09915]

Exemption

Section I—Exemption for Certain Transactions Involving the Purchase and Sale of Certain Units in a Real Estate Separate Account by TIAA

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective October 2, 1995, to the transactions described below, if each of the conditions set forth in Section III have been satisfied:

(a) The purchase by TIAA of certain units (the Liquidity Units), as defined in Section IV(g) below, in a real estate separate account established and operated by TIAA (the Separate Account), as defined in Section IV(l) below, in the event of net withdrawals from the Separate Account; and

(b) The sale of Liquidity Units of the Separate Account by TIAA in the event of net contributions to the Separate Account.

Section II—Exemption for the Purchase of Liquidity Units Owned by TIAA in the Separate Account in Connection With a Decrease in TIAA's Participation in the Separate Account Under Certain Circumstances

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective October 2, 1995, to: (a) The use of cash flow from the Separate Account (the Cash Flow), as defined in Section IV(d) below; (b) the use of liquid investments in the Separate Account; or (c) the use of the proceeds from the sale of certain properties (the Properties), as defined in Section IV(i) below, owned by the Separate Account, for the purpose of purchasing Liquidity Units in the Separate Account from TIAA in connection with a decrease in the participation by TIAA in the Separate Account after the trigger point (the Trigger Point), as defined in Section IV(o) below, has been reached or during the wind down period of the Separate Account (the Wind Down), as defined in Section IV(q) below, provided that the conditions set forth in Section III have been satisfied.*

Section III—General Conditions

This exemption is conditioned upon the adherence by TIAA to the material facts and representations described in the notice of proposed exemption (the Notice) and upon satisfaction of the following requirements:

(a) The decision to elect to add the Separate Account as an additional pension funding option for employee benefit plans (the Plan or Plans), as defined in Section IV(h) below, which invest in the Separate Account has been and is made by the fiduciaries of such Plans (the Fiduciary or Fiduciaries), as defined in Section IV(e) below, or in the case of a TIAA supplemental retirement annuity contract (SRA) or a TIAA individual retirement annuity contract (IRA), the decision to elect to add the Separate Account as an additional pension funding option to a TIAA SRA or a TIAA IRA, has been and is made by the participant in such TIAA SRA or TIAA IRA, if the Fiduciaries of the Plans, and the TIAA SRA and TIAA IRA participants are unrelated to TIAA and its affiliates (the Affiliates or Affiliate), as defined in Section IV(b) below (other than the fiduciaries of any TIAA Pension Plans, as defined in Section IV(n) below);

(b) Each of the Properties in the Separate Account has been and is valued at least annually by an independent, qualified appraiser;

(c) Except as otherwise specified below in paragraph (c)(10) of this Section III, prior to investment of funds in the Separate Account by any participants in a Plan (the Participant or Participants) (and, if applicable, by any of the Plans) which participate in the Separate Account, TIAA has furnished and will furnish to the Fiduciaries of such Plans, to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA, the following information:

(1) A copy of the most recent prospectus for the Separate Account;

(2) Full disclosure concerning the investment guidelines, structure, manner of operation, and administration of the Separate Account; the method of

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* For purposes of this exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

valuation applicable to accumulation units (the Accumulation Units), as defined in Section IV(a) below, and the method of valuation of the Properties, and all other assets owned by the Separate Account;

(3) A written description of potential conflicts of interest that may result from TIAA's acquisition, purchase, retention, redemption, or sale of Accumulation Units in the Separate Account;

(4) The rules and procedures for withdrawal, transfer, redemption, distribution, and payout applicable throughout the term of the Separate Account to TIAA, to individual Participants (and, if applicable, to Plans) which participate in the Separate Account;

(5) The expense and fee provisions of the Separate Account (including but not limited to a description of any services rendered by TIAA, a schedule of fees for such services, and an estimate of the amount of fees to be paid by the Separate Account annually);

(6) A list of all assets in the Separate Account, as of the end of the most recent fiscal period of the Separate Account, and a list of the Properties which the Separate Account acquired or sold within twelve months prior to the end of the most recent fiscal period of the Separate Account;

(7) The appropriate financial statements pertaining to the Separate Account (including but not limited to the most recent audited annual report, income statement, and balance sheet on the Separate Account);

(8) The toll-free telephone number by which information relating to the value of the units in the Separate Account (the Units) and information concerning the quarterly return of the Separate Account is made available daily;

(9) Any reasonably available information (including but not limited to, a copy of the most recent quarterly and other financial reports for the Separate Account filed with the Securities and Exchange Commission (SEC), and the most recent copy of any supplemental schedules of information, publications, or ancillary materials which have been made available to the Fiduciaries of the Plans or to the sponsors of the plans (the Plan Sponsor or the Plan Sponsors) or to Participants invested in the Separate Account) which TIAA believes to be necessary, or which any fiduciary of a plan or any sponsor of a plan reasonably requests in order to determine whether such plan should elect to add the Separate Account as an additional pension funding option for the benefit of participants (or, if applicable, for such plan), or, in the case of a TIAA SRA or a TIAA IRA, which the participant in such TIAA SRA or TIAA IRA reasonably requests in order to determine if he or she should elect to add the Separate Account as an additional pension funding option under such SRA or IRA contract with TIAA; and

(10) A copy of the Notice, as it appeared in the Federal Register, has been provided to the Fiduciaries of the Plans, to the sponsors of the Plans, to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA which prior to or after the publication of the Notice elected to add the Separate Account as an additional pension funding option. In addition, a copy of the granted exemption (the Grant), as it appeared in the Federal Register, is provided to the Fiduciaries of the Plans, to the sponsors of the Plans, to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA which are invested in the Separate Account at the time of the publication of the Grant. If subsequent to the publication of the Grant, any fiduciaries of plans, any sponsors of plans, the sponsors of any SRA, or the participants in any TIAA IRA choose to elect to add the Separate Account as an additional pension funding option to enable such plans to invest in the Separate Account, the fiduciaries of such plans, the sponsors of such plans, the sponsors of such SRA, and the participants in any such IRA shall be provided, prior to investment in the Separate Account, with a copy of both the Notice and the Grant, as such documents appeared upon publication in the Federal Register.

(d) TIAA has made and will make available, within the time periods specified below in subparagraphs (1) through (5) of this paragraph (d), to the Fiduciaries of the Plans, or in the case of a TIAA SRA or a TIAA IRA, to the participant in such SRA or IRA:

(1) Information relating to the value of the Units in the Separate Account to be available daily over a toll-free telephone number and/or to be distributed in writing to Participants (or, if applicable, to the Plans) in the Separate Account in quarterly confirmation statements within five (5) to ten (10) days after the end of each calendar quarter;

(2) Information concerning the quarterly return of the Separate Account to be available daily over a toll-free telephone number and/or to be distributed in writing to Participants (or, if applicable, to the Plans) in the Separate Account in quarterly confirmation statements within five (5) to ten (10) days after the end of each calendar quarter;

(3) A prospectus for the Separate Account to be distributed annually;

(4) Any information or TIAA publication, to be distributed from time to time, which TIAA reasonably believes to be necessary or which the Fiduciaries request, or in the case of a TIAA SRA or a TIAA IRA, which the participant in such SRA or IRA requests (including but not limited to quarterly financial reports filed with the SEC) in order to determine whether any Participant in such Plan, or participant in such SRA or IRA should buy, sell, or continue to hold the Units in the Separate Account, as defined in Section IV(p) below; and

(5) A written notification that quarterly financial reports (including the list of Properties and their current values) are available upon request and a written disclosure of the toll-free telephone number by which Plan Fiduciaries and Plan Sponsors may request delivery of such quarterly financial reports will be provided by TIAA in a publication sent to all Plan Fiduciaries and all Plan Sponsors of the Plans, beginning after the end of the first calendar quarter after the Grant is published in the Federal Register and continuing at least quarterly thereafter.

(e) An independent, qualified fiduciary (the Independent Fiduciary), as defined in Section IV(f) below, has been appointed prior to or coincident with the start of operations of the Separate Account (and is subject to renewal and removal described herein) whose responsibilities include, but are not limited to:

(1) Reviewing and approving the written investment guidelines of the Separate Account as established by TIAA, and approving any changes to such investment guidelines;

(2) Monitoring whether the Properties acquired by the Separate Account conform with the requirements of such investment guidelines;

(3) Reviewing and approving valuation procedures for the Separate Account and approving changes in those procedures;

(4) Reviewing and approving the valuation of Units in the Separate Account and the valuation of Properties held in the Separate Account, as described in the Summary of Facts and Representations in the Notice;

(5) Approving the appointment of all independent, qualified appraisers retained by TIAA to perform periodic valuations of the Properties in the Separate Account;

(6) Requiring appraisals in addition to those normally conducted, whenever, the Independent Fiduciary believes that the characteristics of any of the Properties have changed materially, or with respect to any of the Properties,

whenever the Independent Fiduciary deems an additional appraisal to be necessary or appropriate in order to assure the correct valuation of the Separate Account;

(7) Reviewing the purchases and sales of Units in the Separate Account by TIAA and the Participants (and, if applicable, by the Plans) which participate in the Separate Account to assure that the correct values of the Units and of the Separate Account are applied; reviewing the fixed repayment schedule applicable to the redemption of certain seed money units (the Seed Money Units), as defined in Section IV(k) below, as approved by the State of New York Insurance Department; reviewing any exercise of discretion by TIAA to accelerate the fixed repayment schedule applicable to the redemption of Seed Money Units; and, approving TIAA's exercise of discretion only if such acceleration would benefit the Participants in the Separate Account;

(8) After (and, if necessary, during) the start up period (the Start Up Period), as defined in Section IV(m) below, determining the appropriate Trigger Point, with respect to the ongoing ownership by TIAA of Liquidity Units; establishing a method to implement any changes to the Trigger Point; adjusting the percentage which serves as the Trigger Point; approving or requiring any reduction of TIAA's interest in the Separate Account; and, approving the manner in which such reduction of TIAA's participation in the Separate Account in excess of the Trigger Point is to be effected;

(9) In the event the Trigger Point is reached, participating in and planning any program of sales of the assets of the Separate Account, which would include the selection of the Properties to be sold, the guidelines to be followed in making such sales, and the approval of such sales, if in the opinion of the Independent Fiduciary, such sales are desirable at the Trigger Point in order to reduce the ownership by TIAA of Liquidity Units in the Separate Account or to facilitate the Wind Down;

(10) Supervising the operation of the Separate Account during the Wind Down of such Separate Account;

(11) During the Wind Down, planning any program of sales of the assets of the Separate Account, including the selection of the Properties to be sold, determining the guidelines to be followed in making such sales, and approving the sale of the Properties in the Separate Account, in the event of the termination of the Separate Account, if in the opinion of the Independent Fiduciary, such sales are desirable to facilitate the Wind Down; and

(12) Reviewing any other transactions or matters involving the Separate Account that are submitted to the Independent Fiduciary by TIAA and determining whether such transactions or other matters are fair to the Separate Account and in the best interest of the Separate Account.

(f) The exemption is also subject to the condition that the following transactions involving the Separate Account have not occurred and will not occur:

(1) Participation by the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's general account (the General Account), or any other separate account over which TIAA or its Affiliates has any investment control in any joint venture with the Separate Account, or in the ownership of the Properties of the Separate Account either alone or together with a joint venture partner;

(2) The borrowing of funds from the Separate Account by the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's General Account, or any other separate account over which TIAA or its Affiliates has investment control, or the lending of funds to the Separate Account by the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's General Account, or any other separate account over which TIAA or its Affiliates has investment control in order to leverage any purchase by the Separate Account of any of the Properties, or otherwise; and

(3) The acquisition by the Separate Account of any Properties from or the sale by the Separate Account of any Properties to the Independent Fiduciary, TIAA, any Affiliate of TIAA, TIAA's General Account, or any other separate account over which TIAA or its Affiliates has investment control.

(g) The liquidation of any Accumulation Units held by a Participant or participating Plan, for which a withdrawal request is pending, has not been and will not be delayed by reason of the redemption of Seed Money Units held by TIAA, and TIAA will always advance funds by purchasing Liquidity Units to fund the withdrawal requests of Participants or Plans on a timely basis;

(h) TIAA must maintain for a period of six (6) years from the date of any transaction, the records necessary to enable the persons described in paragraph (i) of this Section III to determine whether the conditions of this exemption have been met. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of TIAA and its Affiliates, the records are lost or destroyed prior to the end of the six-year period, and no parties in interest, other than TIAA or its Affiliates, shall be subject to a civil penalty that may be assessed under section 502(i) of the Act, or to taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (i) below.

(i)(1) Except as provided in subparagraph (2) of this paragraph (i) and notwithstanding any provision of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (h) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor (The Department) or the Internal Revenue Service;

(B) Any Fiduciary of a Plan which participates in the Separate Account, or in the case of a TIAA SRA or a TIAA IRA, any participant in such SRA or IRA, who has authority to acquire or dispose of the interests of such SRA or IRA contract, or any duly authorized employee or representative of such Fiduciary of a Plan or participant in such SRA or IRA;

(C) Any contributing employer to any Plan participating in the Separate Account, or any duly authorized employee or representative of such employer; and

(D) Any Participant or beneficiary of any Plan participating in the Separate Account, or any duly authorized employee or representative of such Participant or beneficiary.

(2) None of the persons described in subparagraphs (1) (B) through (D) of this paragraph (i) shall be authorized to examine the trade secrets of TIAA or any of its Affiliates, or any of its commercial or financial information which is privileged or confidential.

Section IV—Definitions

For the purpose of this exemption:

(a) ''Accumulation Units'' mean the units of interest into which equity participation in the Separate Account is divided during the accumulation phase of the annuity contracts prior to retirement by a Participant. Seed Money Units, as defined in Section IV(k) below, and Liquidity Units, as defined in Section IV(g) below, are Accumulation Units.

(b) ''Affiliate'' or ''Affiliates'' of TIAA include(s):

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with TIAA.

(2) Any officer, director, or employee of TIAA, or of a person described in paragraph (b)(1) of Section IV, and

(3) Any partnership in which TIAA is a partner.

(c) ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) ''Cash Flow'' means: (1) The sum of: (a) Income received by the Separate Account from investments (including dividends and/or interest from non-real estate investments, and net operating income, less payment of capital expenditures and changes in reserves for capital expenditures, from equity real estate investments); and (b) Participant and Plan contributions (including transfers to the Separate Account) MINUS (2) the sum of: (a) Separate Account expense charges (including investment and administrative expenses for mortality and expense guarantees); and (b) any redemption of Seed Money Units at fair market value.

(e) ''Fiduciary'' or ''Fiduciaries'' mean(s) the individual fiduciary or fiduciaries acting on behalf of each of the Plans that invest in the Separate Account.

(f) ''Independent Fiduciary''—

(1) For purposes of this definition, an Independent Fiduciary means a person who:

(A) Is not an Affiliate of TIAA;

(B) Does not have an ownership interest in TIAA or its Affiliates;

(C) Is not a corporation or partnership in which TIAA or any of its Affiliates has an ownership interest;

(D) Is not a Fiduciary with respect to any Plan which participates in the Separate Account;

(E) Has acknowledged in writing acceptance of fiduciary responsibility; and

(F) Is either:

(i) A business organization which has at least five (5) years of experience with respect to commercial real estate investments or other appropriate experience;

(ii) A committee comprised of three to five individuals who each have had at least five (5) years of experience with respect to commercial real estate investments or other appropriate experience; or

(iii) A committee comprised both of a business organization or organizations and individuals having the qualifications described in paragraphs (f)(1) (A) through (E) of Section IV above.

(2) For the purposes of the definition of Independent Fiduciary, no organization or individual may serve as Independent Fiduciary for the Separate Account for any fiscal year, if the gross income received from TIAA or its Affiliates by such organization or individual (or by any partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder) for that fiscal year exceeds 5 percent (5%) of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the 5 percent (5%) limitation is applied with reference to the fiscal year in which such organization or individual serves as an Independent Fiduciary. The income limitation includes services rendered to the Separate Account as Independent Fiduciary, as described in this exemption.

(3) No organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder, during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of six (6) months after such organization or individual ceases to be an Independent Fiduciary, may

(A) Acquire any property from or sell any property to TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account;

(B) Borrow any funds from, or lend any funds to TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account;

(C) Participate in any joint venture with TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account, or participate, either alone or together with a joint venture partner, in the ownership of the Properties with TIAA, its Affiliates, TIAA's General Account, or any separate account maintained by TIAA or its Affiliates, including the Separate Account; or

(D) Negotiate any such transactions, described above in paragraph (f)(3) (A) through (C) of Section IV.

(4) No Fiduciary of a Plan or Plan Sponsor which participates in the Separate Account or a designee of such Fiduciary, Plan Sponsor, or Plan may serve as the Independent Fiduciary with respect to the Separate Account.

(g) ''Liquidity Units'' mean Accumulation Units, as defined in Section IV(a) above, that are purchased from Participants (or, if applicable, from the Plans) who participate in the Separate Account by TIAA's General Account, when the Cash Flow of the Separate Account, as defined above in Section IV(d), and liquid investments of the Separate Account are insufficient, in order to guarantee liquidity for such Participants (or, if applicable, for such Plans) who wish to withdraw or transfer funds from the Separate Account.

(h) ''Plan or Plans'' mean(s) an employee benefit plan or employee benefit plans (primarily participant-directed defined contribution plans, but also some defined benefit plans), qualified pursuant to sections 401(a), 403(a), 403(b), 414(d) and 457(b) of the Code, as well as any TIAA IRA and TIAA SRA, as described, respectively, under section 408 and section 403(b) of the Code, which may participate in ownerships of Units in the Separate Account and which are subject to section 406 of the Act and/or section 4975 of the Code.

(i) ''Properties'' mean the geographically dispersed retail and office buildings, light industrial facilities, and residential apartment space with good operating income (and such other Properties that may be acquired pursuant to changes in the investment guidelines for the Separate Account that are approved by the Independent Fiduciary) which TIAA has acquired on behalf of the Participants (and, if applicable, the Plans) that invest in the Separate Account.

(j) ''Seed Money'' means the total amount (not to exceed $100 million) actually contributed by TIAA's General Account to the Separate Account for the purpose of acquiring Properties for the Separate Account. Seed Money will be applied to purchase Accumulation Units at the fair market value of those Units at the time of purchase.

(k) ''Seed Money Units'' mean the Accumulation Units, as defined in Section IV(a) above, that are issued by the Separate Account to TIAA's General Account in exchange for Seed Money, as defined above in Section IV(j), during the Start Up Period of the Separate Account.

(l) ''Separate Account'' means the real estate equity pooled separate account invested in by Participants (and, if applicable by Plans), as described herein.

(m) ''Start Up Period'' means the period during which repayment of TIAA's General Account of Seed Money, as defined in Section IV(j) above, must be made on a fixed repayment schedule as approved by the State of New York

Insurance Department (NYID). In this regard, the redemption of Seed Money Units by TIAA will begin on the earlier to occur of:

(1) Two (2) years from the date on which TIAA first opened the Separate Account to Participants (and, if applicable, to Plans) for paying premiums to the Separate Account, or

(2) The date on which the value of the Separate Account first reaches $200 million. Thereafter, at least 20 percent (20%) of the original number of Seed Money Units acquired by TIAA's General Account from the contribution of Seed Money to the Separate Account are to be redeemed on predetermined dates in each year, as established by TIAA, for a period of five (5) years (at fair market value based on the value of Accumulation Units on the date of each redemption). The exercise of any discretion by TIAA to accelerate the fixed repayment schedule applicable to the redemption of Seed Money Units is subject to the advance review and approval of the Independent Fiduciary, and any such acceleration will not be applied so as to prevent a redemption of Seed Money Units scheduled to occur on any of the predetermined dates during any year. The Start Up Period will expire when all the Seed Money Units originally acquired by TIAA's General Account from the contribution of Seed Money to the Separate Account have been redeemed by TIAA.

(n) ''TIAA Pension Plans'' mean certain defined benefit and certain defined contribution plans maintained by TIAA. Among the defined contribution plans maintained by TIAA are the TIAA Retirement Plan, which is tax-qualified under the Code, and the TIAA Tax-Deferred Annuity Plan, which is a salary reduction annuity plan, pursuant to section 403(b) of the Code. Participants in the TIAA Retirement Plan and the TIAA Tax-Deferred Annuity Plan are permitted to invest in the Separate Account.

(o) ''Trigger Point'' means the point, as established by the Independent Fiduciary, at which TIAA's participation in the Separate Account through the ownership of Liquidity Units is decreased with the approval of or as required by the Independent Fiduciary, acting on behalf of the Participants (and, if applicable, the Plans).

(p) ''Units'' mean the units of interest into which equity participation in the Separate Account is divided.

(q) ''Wind Down'' means the period which begins on the date on which TIAA notifies all Participants (and, if applicable, all Plans invested in the Separate Account) that TIAA has decided to terminate the Separate Account and concludes on the date on which no Accumulation Units are held by Participants (or, if applicable, by Plans).

EFFECTIVE DATE: The exemption is effective, as of October 2, 1995, the date the Separate Account was first opened to Participants and Plans for investment.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the date of the publication of the Notice in the Federal Register on April 4, 1996. All comments and requests for hearing were due by May 20, 1996.

During the comment period, the Department received no requests for hearing. However, the Department did receive a comment letter from the applicant, TIAA, dated May 17, 1996. The comments from TIAA requested certain changes and clarifications to the conditions of the exemption as proposed in the Notice, and certain amendments which, according to TIAA, should have been reflected in the SFR, as published in the Notice in the Federal Register. TIAA's comments on the conditions of the exemption and the SFR are discussed below in an order that corresponds to the appearance of the relevant language in the Notice.

1. In its comment TIAA points out that throughout the Notice the phrase, ''in the case of a contract between TIAA and a supplemental retirement account (SRA) or an individual retirement account (IRA),'' is used to describe the relationship between TIAA and any SRA or IRA. To reflect the fact that TIAA provides annuity products to contractholders who are participants in such an SRA or an IRA, TIAA requests that the phrase, ''in the case of a TIAA supplemental retirement annuity contract (SRA) or TIAA individual retirement annuity contract (IRA),'' be substituted for all references throughout the final exemption to the phrase quoted above which appeared throughout the Notice.

The Department concurs with TIAA's requested change. Accordingly, the Department has modified the final exemption to reflect the change in the first instance where the phrase occurred in the operant language of the exemption; but, in order to avoid repeating the entire phrase, the Department has instead substituted the following abbreviated phrase, ''in the case of a TIAA SRA or a TIAA IRA,'' subsequently. In addition, the Department has made changes in the language of the conditions of the exemption in order to be consistent, so that any reference therein to an SRA or an IRA will now be to a TIAA SRA or a TIAA IRA.

2. TIAA believes that a modification to Section III(a) of the exemption is necessary to take into account the fact that TIAA's own plans have been and will be invested in the Separate Account. TIAA appears to be concerned that the obligation of TIAA to purchase Liquidity Units may amount to an extension of credit between TIAA and its own plans and that such transaction would not be permitted under the terms of condition III(a), as it appeared in the Notice. As a result, TIAA requests that at the end of Section III(a) on page 15128 of the Notice, the parenthetical phrase, ''(other than the fiduciaries of any TIAA Pension Plans, as defined in Section IV(n) below),'' be inserted before the semi-colon. TIAA also requests that a similar change should have been made to the SFR at the end of the second sentence of the first paragraph of representation 14 on page 15138 of the Notice.

The Department concurs with TIAA's request for changes in the language of the conditions of Section III(a) of the exemption. Accordingly, the language of Section III(a) has been amended to read as follows:

> The decision to elect to add the Separate Account as an additional pension funding option for employee benefit plans (the Plan or Plans), as defined in Section IV(h) below, which invest in the Separate Account has been and is made by the fiduciaries of such Plans (the Fiduciary or Fiduciaries), as defined in Section IV(e) below, or in the case of a contract between TIAA and a supplemental retirement annuity contract (SRA) or an individual retirement annuity contract (IRA), the decision to elect to add the Separate Account as an additional pension funding option to a TIAA SRA or a TIAA IRA has been and is made by the participant in such TIAA SRA or TIAA IRA, if the Fiduciaries of the Plans and the TIAA IRA and TIAA SRA participants are unrelated to TIAA and its affiliates (the Affiliates or Affiliate), as defined in Section IV(b) below, (other than the fiduciaries of any TIAA Pension Plans, as defined in Section IV(n) below).

However, the Department wishes to note that as indicated in footnote 9 on page 15132 of the Notice, TIAA represented in its application for exemption that any acquisition of Units in the Separate Account by employee benefit plans sponsored by TIAA would not violate section 406(a) or 406(b) of the Act by reason of the statutory exemption contained in section 408(b)(5) of the Act. To the extent that the acquisition of Units in the Separate Account by plans sponsored by TIAA

does not satisfy the requirements of section 408(b)(5) of the Act, no relief has been provided by the exemption for the participation by such plans in the Separate Account.

3. TIAA has requested a modification to the language of Section III(c) of the exemption. In this regard, Section III(c), as set forth on page 15128, column 2 of the Notice read, in part,

> Except as otherwise specified below in paragraph (c)(10) of this Section III, prior to investment of funds in the Separate Account by any participant in a Plan (the Participant or Participants) (and, if applicable, by any of the Plans) which participate in the Separate Account, TIAA has furnished and will furnish to the Fiduciaries of such Plans and, in the case of a contract between TIAA and a SRA or an IRA, to the participant in such SRA or IRA, the following information.

TIAA requests that the phrase, ''or immediately following,'' be inserted after the words, ''prior to,'' and before the word, ''investment,'' in the language of Section III(c) above. TIAA asserts that, as it has 1.8 million existing contractholders, it cannot provide the information required in Section III(c), prior to a participant's decision to invest in the Separate Account. In this regard, TIAA states that, with some exceptions, the information the Department requires TIAA to disclose, pursuant to Section III(c), is included in the prospectus for the Separate Account. In the event the prospectus is not provided prior to investment of funds in the Separate Account, TIAA represents that it will provide this information immediately following such investment in accordance with the Federal securities rules governing prospectus delivery. However, in the event this proposal was not satisfactory to the Department, TIAA suggested as an alternative that the introductory language of Section III(c) be amended to conform to the language, as set forth in Section III(c)(10). As such, the introductory language of Section III(c), as proposed in the alternative by TIAA, would read as follows:

> Except as otherwise specified below in paragraph (c)(10) of this Section III, prior to investment of funds in the Separate Account by any participant in a Plan (the Participant or Participants) (and, if applicable, by any of the Plans) which participate in the Separate Account, TIAA has furnished and will furnish to the Fiduciaries of such Plans to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA, the following information:

With respect to the timing of disclosures, the Department believes that the information required to be provided by TIAA, pursuant to Section III(c) of the exemption, is fundamental to the making of informed investment decisions and should be furnished to certain parties by TIAA *prior to* investment of funds in the Separate Account by investors. In this regard, the Department points out that TIAA on page 30 of its application for exemption and again on page 2 of Exhibit A to such application, represented that the timing of disclosures to Fiduciaries of the Plans, Plan Sponsors, and in the case of a TIAA SRA or TIAA IRA to the Participants of such TIAA SRA and TIAA IRA would occur prior to the investment of funds in the Separate Account by any participants (and, if applicable, by any plans).

The Department concurs with the alternative language proposed by TIAA. Accordingly, the language of Section III(c) has been amended to read as above.

4. As discussed in paragraph three (3) above, pursuant to Section III(c), TIAA must provide certain disclosures about the Separate Account to certain investors prior to their investing in the Separate Account. In this regard, the Department required in Section III(c)(1), as set forth on page 15128, column 2 of the Notice, that TIAA provide to such parties, among other information, the following items:

> a copy of the most recent prospectus for the Separate Account, the most recent quarterly and other financial reports for the Separate Account filed with the Securities and Exchange Commission (SEC), and the most recent copy of any supplemental schedule of information, publications, or ancillary materials which have been made available to Plan Sponsors or Participants invested in the Separate Account.

Further, pursuant to Section III(c)(8), as set forth on page 15128, column 2 of the Notice, the Department required TIAA to provide such parties with:

> copies of the most recent reports on the Separate Account, including but not limited to information relating [*sic.*] the value of units in the Separate Account (the Units), as defined in Section IV(p) below; and the quarterly return for the Separate Account, and the most recent quarterly updates of the valuation of the Separate Account (including a list of the holdings of the Separate Account during the period).

TIAA requests that Section III(c)(1) be amended such that only a copy of the most recent prospectus for the Separate Account be required to be disclosed. In this regard, TIAA represents that, as required by the amended introductory language in Section III(c), it has provided and will continue to provide a copy of the prospectus for the Separate Account to the Fiduciaries of Plans, to the sponsors of any TIAA SRA, and to the participants in any TIAA IRA which invest in the Separate Account. TIAA represents that the prospectus is updated annually and contains detailed audited financial information concerning the Separate Account and detailed disclosure concerning its operations and investment objectives. Further, TIAA represents that it has made and will make available unit value information and quarterly return information for the Separate Account via a toll-free telephone number that can be accessed at any time. In addition, TIAA represents that, upon request, it has provided and will provide copies of quarterly and other financial reports filed with the SEC. TIAA believes that its approach provides superior disclosure at a substantial cost savings which benefits the Participants (and, if applicable, the Plans) which participate in the Separate Account, and is essential for the Separate Account to be cost-effective.

The Department concurs, in part, with TIAA's requested modifications to the disclosure requirements of Section III(c)(1) and (c)(8), as set forth in the Notice. However, the Department believes that, any prospective investor who wishes to receive the information which was described in the deleted portion of Section III(c)(1) should be able to request that TIAA provide such information, pursuant to Section III(c)(9) of the exemption. Further, the Department believes that any investor interested in investing in the Separate Account should be able to request additional information from TIAA which is reasonably available. This is consistent with the provisions of Section III(d)(4) which permit a Fiduciary of a Plan which is invested in the Separate Account and a participant in a TIAA SRA or an TIAA IRA which is invested in the Separate Account to request similar information from TIAA. In this regard, the Department wishes to make clear that the phrase, ''any other reasonably available information,'' as set forth in Section III(c)(9), includes, but is not limited to, copies of the most recent quarterly and other financial reports for the Separate Account filed with the SEC, or the supplemental schedules of information, publications, or ancillary materials which have been made available to Fiduciaries of the Plan, to Plan Sponsors, or to Participants who are invested in the Separate Account. Accordingly, the Department has modified the language in Section III(c)(9) by inserting between the word, ''information,'' and the word, ''which,'' the following parenthetical phrase,

> (including but not limited to, a copy of the most recent quarterly and other financial reports for the Separate Account filed with

the Securities and Exchange Commission (SEC), and the most recent copy of any supplemental schedules of information, publications, or ancillary materials which have been made available to Fiduciaries of the Plan or to the sponsors of the plans (the Plan Sponsor or the Plan Sponsors) or to Participants invested in the Separate Account).

With respect to Section III(c)(8), the Department concurs with TIAA's request to delete Section III(c)(8), as set forth on page 15128, column 2 of the Notice. However, the Department notes that TIAA has already agreed to make such information available daily via a toll-free telephone number to any Fiduciary of a Plan and to any participant in a TIAA SRA or a TIAA IRA who is already invested in the Separate Account, pursuant to Section III(d)(1) and (d)(2), as set forth in the Notice on page 15129, columns 1–2. Accordingly, the Department has modified Section III(c)(8) to read as follows, ''the toll-free telephone number by which information relating to the value of the units in the Separate Account (the Units) and information concerning the quarterly return of the Separate Account is made available daily.''

5. TIAA submitted comments with respect to Section III(c)(10). Section III(c)(10) requires that TIAA provide copies of the Notice and copies of the granted final exemption (the Grant) to certain parties within a prescribed period of time. TIAA requested modification of the requirements of Section III(c)(10), such that the Notice and Grant need not be supplied to prospective investors in the Separate Account 30 days prior to their investment. TIAA believes that requiring the prospective investors to wait 30 days after receiving a copy of the Notice and Grant would unduly interrupt investment in the Separate Account. Further, TIAA maintains that it would be impractical and costly for TIAA to administer a 30 day waiting period, particularly with respect to participants in TIAA IRAs who are allowed to select other allocation options immediately upon enrollment.

Although the Department notes that TIAA on page 31 of its application for exemption, represented that it would provide a copy of the Notice and a copy of the Grant to Plan Fiduciaries and Plan Sponsors, at least 30 days prior to investment in the Separate Account, the Department concurs with TIAA's request, and accordingly, has deleted the 30 day requirement from Section III(c)(10) for those investors who invest in the Separate Account after the date of the Grant.

In addition, with respect to the requirements imposed by Section III(c)(10), TIAA was concerned that investors who invested after publication of the Notice but before publication of the Grant received inconsistent treatment with respect to the receipt of a copy of the Notice. In this regard, Section III(c)(10), as proposed, required delivery of a copy of the Notice, upon publication of the Notice, to certain parties who were at that time invested in the Separate Account; but, did not specify, when or if, those parties who invested in the Separate Account subsequent to the publication of the Notice had to receive a copy of the Notice. TIAA requested that the Department modify Section III(c)(10), such that investors who invested after the publication of the Notice but before the publication of the Grant, receive a copy of the Notice immediately following their investment, and receive a copy of the Grant, upon publication of the Grant in the Federal Register. The Department concurs and has modified the language of Section III(c)(10) accordingly.

6. In Section III(d)(1) on page 15129 of the Notice, in the line 5, after the word, ''Participants,'' TIAA suggests that the parenthetical phrase, ''(or, if applicable, to the Plans),'' be added to the sentence which should read, as follows:

information relating to the value of the Units in the Separate Account to be available daily over a toll-free telephone number and/or to be distributed in writing to Participants (or, if applicable, to the Plans) in the Separate Account in quarterly confirmation statements within five (5) to ten (10) days after the end of each calendar quarter.

Further, TIAA suggests that the same parenthetical phrase should be inserted after the word, ''Participants,'' in line 5, in Section III(d)(2) on page 15129 of the Notice, such that the sentence should read as follows:

information concerning the quarterly return of the Separate Account to be available daily over a toll-free telephone number and/or to be distributed in writing to Participants (or, if applicable, to the Plans) in the Separate Account in quarterly confirmation statements within five (5) to ten (10) days after the end of each calendar quarter.

The Department concurs.

7. In Section III(g), as set forth in the Notice on page 15130, column 1, lines 7 and 8, TIAA requests that the Department delete the italicized phrase ''has advanced and'' from the following sentence:

The liquidation of any Accumulation Units held by a Participant or participating Plan, for which a withdrawal request is pending, has not been and will not be delayed by reason of the redemption of Seed Money Units held by TIAA, and TIAA *has advanced and* [emphasis added] will always advance funds by purchasing Liquidity Units to fund the withdrawal requests of Participants or Plans on a timely basis.

TIAA believes that this change is necessary, because to date TIAA has not had to advance funds by purchasing Liquidity Units. The Department concurs.

8. TIAA requests that representation 12, as it appeared in the SFR, should have been stated differently. In this regard, in representation 12, as set forth on page 15137 of the Notice, column 3, the first sentence of the last full paragraph, reads as follows:

Prior to investing in the Separate Account, it is represented that each prospective participant (and, if applicable, each fiduciary of prospective participating plans) has been and will be provided with information regarding the role of the Independent Fiduciary with respect to the Separate Account and has been and will be advised of the identity of the party appointed to serve as the Independent Fiduciary.

TIAA requests that the phrase, ''[P]rior to investing in the Separate Account,'' at the beginning of this paragraph should have been deleted, and the word, ''it,'' should have been capitalized as the beginning of the sentence. In addition, TIAA requests that on line 5 and on line 9 of the same paragraph, the word, ''and'' should have been deleted, and the word, ''or,'' should have been substituted following the words, ''has been.''

The Department does not concur with TIAA in the changes that have been requested to representation 12 of the SFR. In the opinion of the Department, investors who are interested in investing in the Separate Account must be provided, prior to investing in such account, with disclosure of the identity of the Independent Fiduciary and the role of such fiduciary with respect to the Separate Account. In this regard, the Department notes that on page 15 of its application for exemption TIAA made the following representation:

Each Participant (and, as applicable, each Participating Plan) will be informed of the appointment of the Independent Fiduciary. A decision by a Plan fiduciary or a Plan Sponsor on behalf of a Plan to elect to add the Real Estate Separate Account as an additional pension funding option, and to participate in the Account, after full disclosure by TIAA, will constitute approval and acceptance by the Plan fiduciary or Plan sponsor of the Independent Fiduciary. Similarly, a decision by a TIAA SRA contractholder or by a TIAA IRA contractholder to elect to add the Real Estate Separate Account as an additional pension funding option, after full disclosure by TIAA,

will constitute approval and acceptance by such a contractholder of the Independent Fiduciary. (A decision by a Participant in such a Plan to invest in the Account, after full disclosure by TIAA, will constitute approval and acceptance by the Participant of the Independent Fiduciary.)

Accordingly, the Department does not agree that changes to the SFR, as requested by TIAA are merited.

9. TIAA has requested that representation 14, as set forth in the SFR at page 15138, column 3 of the Notice, should have been stated differently. In this regard, TIAA requests that the italicized phrase in the quotation below should have been deleted from representation 14. The language of the first paragraph of representation 14 reads as follows:

It is represented that during the operation of the Separate Account, no member of the Board of Trustees of TIAA or of CREF has had or will have a role in the selection of the Separate Account as a funding vehicle for any of the Plans *or has served or will serve as a Fiduciary to any Plan participating in TIAA investment funding options [emphasis added].* In this regard, Fiduciaries of the Plans unrelated to TIAA, or in the case of an SRA or an IRA, participants unrelated to TIAA who participate in such SRA or IRA, have made and will make the decision to invest in the Separate Account.

Specifically, TIAA does not wish any member of the Board of Trustees of TIAA or of CREF to be prohibited, either currently or in the future, from serving as a fiduciary to any of the Plans. The Department concurs.

In the event a member of the Board of Trustees of TIAA or of CREF does serve as a fiduciary to a Plan, TIAA represented in its comment that such member will not play a role in such Plan's consideration and selection of the Separate Account as a funding vehicle for the Plan. In this regard, TIAA stated, on page 10 of Exhibit A of its application for exemption, that:

In the event that any member of the TIAA Board or the CREF Board also serves in a fiduciary capacity to an ERISA-covered plan, such person will recuse himself or herself from any and all fiduciary decisions related to the Real Estate Separate Account, including the decision to add the Real Estate Separate Account as a funding option to his or her plan.

The Department concurs.

10. TIAA has requested that representation 14, as set forth in the SFR at the bottom of page 15139, column 1 in the Notice, should have been stated differently. Specifically, TIAA requests that the underlined phrase in the sentence quoted below should have been deleted from the SFR. In this regard, the fourth line of representation 14, reads as follows:

Further, TIAA *has published and [emphasis added]* will publish in a TIAA publication, which is provided at least quarterly to all Plan Sponsors and Fiduciaries of the Plans, a written notice that the quarterly financial reports (including the list of Properties and their current values) are available on request.

The Department concurs that TIAA's requested change should have been reflected in the SFR. Further, in a letter dated October 5, 1995, TIAA represented that it would also publish a toll-free telephone number, which would enable Plan Sponsors and Fiduciaries of the Plans to easily get prompt delivery of such quarterly financial reports. The Department believes that it is necessary for Plan Sponsors and Fiduciaries of the Plans to receive such periodic notification of the availability of quarterly financial reports and to be reminded of the toll-free telephone number, in order to request and receive copies of such financial reports from TIAA. Accordingly, the Department has added a new subparagraph five (5) to Section III(d). In this regard, Section III(d)(5) reads, as follows,

a written notification that quarterly financial reports (including the list of Properties and their current values) are available upon request and a written disclosure of the toll-free telephone number by which Plan Fiduciaries and Plan Sponsors may request delivery of such quarterly financial reports will be provided by TIAA in a publication sent to all Plan Fiduciaries and all Plan Sponsors of the Plans, beginning after the end of the first calendar quarter after the Grant is published in the Federal Register and continuing at least quarterly thereafter.

In order to integrate this new Section III(d)(5) into the numbering system of the exemption, the Department has deleted the word, ''and,'' after the semi-colon in Section III(d)(3) and has added the word, ''and,'' after the semi-colon at the end of Section III(d)(4).

11. The Department acknowledges and incorporates by reference such other clarifications requested by the applicant to the information contained in the SFR. For further discussion regarding the applicant's comments, interested persons are encouraged to obtain a copy of the exemption application file (D–9915) which is available in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

After full consideration and review of the entire record, including the written comments filed by the applicant, the Department has determined to grant the exemption, as modified and clarified above. Comments submitted by the applicant to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on Thursday, April 4, 1996, 60 FR 15128.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Mewbourne Oil Company, Inc. Plan (the Plan) Located in Tyler, TX

[Prohibited Transaction Exemption 96–77; Exemption Application No. D–10173]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past contribution by Mewbourne Oil Company (the Employer) to the Plan of a U.S. Treasury Strip Bond (the Bond) and the subsequent exchange by the Employer of the Bond for cash provided that: (a) The contribution was a one-time transaction; (b) the Bond was valued at fair market value as of the date of the contribution; (c) no commissions were paid in connection with the transaction; (d) the Bond represented less than 25% of the fair market value of the Plan's assets at the time of the contribution; and (e) the Bond was returned to the Employer in exchange for cash in the amount of $173,759 plus interest.

EFFECTIVE DATE: This exemption is effective February 11, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 22, 1996 at 61 FR 37925.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Zerhusen and Ghazi, M.D. Inc. Profit Sharing Plan (the Plan) Located in Cincinnati, Ohio

[Prohibited Transaction Exemption 96–78 Exemption Application No. D–10224]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by Dr. J. Robert Zerhusen's individual, self-directed account within the Plan (the Account) of a parcel of real property (the Property) to his spouse, Marilyn E. Zerhusen (Mrs. Zerhusen), a participant in the Plan and a party in interest with respect to the Plan, provided that the following conditions are satisfied: (a) The Sale is a one time transaction for a lump sum cash payment; (b) the purchase price is the fair market value of the Property as of the date of the Sale; (c) the Property has been appraised by a qualified, independent real estate appraiser; and (d) the Account will pay no commissions or other expenses relating to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 27, 1996 at 61 FR 44085.

FOR FURTHER INFORMATION CONTACT: Wendy McColough of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Huggler & Silverang Profit Sharing Plan (the Plan) Located In Philadelphia, Pennsylvania

[Prohibited Transaction Exemption 96–79; Exemption Application No. D–10238]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of two 5 percent limited partnership interests (collectively, the Interests) in Rosemont Square Associates, L.P. (the Partnership), one to Mr. David H. Huggler and the second to Mr. Kevin J. Silverang, respectively, parties in interest with respect to the Plan; provided (1) the Sale is a one-time transaction for cash, (2) the Plan pays no commissions nor incurs any expenses in connection with the transaction, and (3) the Plan receives as consideration for the Sale no less than the fair market value of the Interests as of the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 6, 1996, at 61 FR 47203.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of October, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–26601 Filed 10–16–96; 8:45 am]

BILLING CODE 4510–29–P

Full Council Meeting; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a full council meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Nov. 13, 1996, in Room S–3215 A&B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

The purpose of the meeting, which will be from 1:00 to 2:00 p.m., is to brief the Department on the Working Groups' final reports of the year. The Council will also be briefed by Assistant Secretary Berg on the activities and accomplishments of the agency and the department. The current Council year concludes on Nov. 14, and the five departing members will be cited for their contributions by the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before Nov. 4, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by Nov. 4 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before Nov. 4, 1996.

Signed at Washington, DC this 9th day of October, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–26481 Filed 10–16–96; 8:45 am]

BILLING CODE 4510–29–M

Working Group on the Impact of Alternative Tax Reform Proposals on ERISA Employer-Sponsored Plans; Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on the Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Nov. 12, 1996, in Room S–3215 A&B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will be held from 1 to 3:30 p.m., is for members to finalize their report to the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before Nov. 4, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on the Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by Nov. 4 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before Nov. 4, 1996.

Signed at Washington, DC this 9th day of October, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–26482 Filed 10–16–96; 8:45 am]

BILLING CODE 4510–29–M

Working Group Studying Third Party Trustees to Protect Plan Participants; Advisory Council on Employee; Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Protections for Benefit Plan Participants of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Nov. 13, 1996, in Room S–3215 A&B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will be held from 9:30 a.m. to noon, is to formulate a final report for the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before Nov. 4, 1996 to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Protections for Benefit Plan Participants of the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by Nov. 4, at the address indicated in the notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before Nov. 4, 1996.

Signed at Washington, DC this 9th day of October, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–26483 Filed 10–16–96; 8:45 am]

BILLING CODE 4510–29–M

Working Group on Guidance for Selecting and Monitoring Service Providers; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Guidance for Selecting and Monitoring Service Providers of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Nov. 12, 1996, in Room S3215 A&B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

The purpose of the meeting, which will run from 9:30 a.m. to noon, is for members to finalize their report to the Secretary of Labor. Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before Nov. 4, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Guidance for Selecting and Monitoring Service Providers should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by Nov. 4, 1996, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before Nov. 4.

Signed at Washington, D.C. this 9th day of October, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–26484 Filed 10–16–96; 8:45 am]

BILLING CODE 4510–29–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, October 18, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor o.b.o. Dixon v. Pontiki Coal Corp., Docket No. KENT 94–1247–D. (Issues include whether the judge correctly determined that the Commission does not have jurisdiction over complaints filed by the Secretary of Labor that allege discrimination against miners who have not filed an initiating complaint under section 105(c)(2) of the Mine Act, and whether the judge correctly determined that a person may become a miners' representative before complying with 30 C.F.R. Part 40.)

It was determined by a majority vote of the Commissioners that this matter be discussed in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 96–26835 Filed 10–15–96; 3:32 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–127]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made submission. Accordingly, this notice announces NASA's plans to survey NASA's Small Business Innovative Research (SBIR) firm awardees for the purposes of obtaining information regarding the extent to which NASA funded SBIR technology has been commercially applied and to assess the industrial activity otherwise that has resulted from technology developed under NASA's SBIR program. This information is critical to the assessment of NASA's success regarding its mission objective that NASA programs contribute significantly to national economic growth and competitiveness in accordance with the Vice President's National Performance Review recommendations and the President's National Space Policy of September 19, 1996.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before December 16, 1996.

ADDRESSES: All comments should be addressed to John R. Yadvish, Code XC, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for Office of Management and Budget (OMB) approval.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: NASA SBIR Commercial Metrics.

OMB Number: None Assigned.

Type of review: New collection.

Need and Uses: NASA SBIR Phase II awardee firms would be asked to voluntarily provide data once every three years regarding the extent to which commercial products and services and related commercial activity have resulted from NASA funded SBIR technology. This information is critical to NASA's evaluating and reporting on its success regarding one of its primary mission objectives that NASA programs' contributing significantly to the national economic growth, as well as NASA's success in meeting the objectives of the Vice President's National Performance Review recommendations for NASA and the President's National Space Policy.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 650 in total, of which approximately 200 will be sampled every year at a frequency of once every three for each firm.

Responses Per Respondent: Once every three years.

Estimated Annual Responses: 200.

Estimated Hours Per Request: 1.

Estimated Annual Burden Hours: 217.

Frequency of Report: Once every three years.

Dated: October 10, 1996.

Russell S. Rice,

Director, IRM Division.

[FR Doc. 96–26677 Filed 10–16–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–125]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Ensinger, Inc., of Washington, PA 15301, has applied for a partially exclusive license to practice the inventions described and claimed in NASA Case No. LAR–15205–1–CU, entitled ''Tough, Soluble, Aromatic, Thermoplastic Copolyimides''; and NASA Case No. LAR–15205–2, entitled ''Process for Preparing Tough, Soluble, Thermoplastic Copolyimides''; which are all assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; fax (757) 864–9190.

Dated: October 8, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–26675 Filed 10–16–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–124]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Ranbar Electrical Materials, Inc., of Manor, PA 15665, has applied for a partially exclusive license to practice the inventions described and claimed in NASA Case No. LAR–15205–1–CU, entitled ''Tough, Soluble, Aromatic, Thermoplastic Copolyimides''; and NASA Case No. LAR–15205–2, entitled ''Process for Preparing Tough, Soluble, Thermoplastic Copolyimides''; which are all assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; fax (757) 864–9190.

Dated: October 8, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–26674 Filed 10–16–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–126]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that SpaceTec, Inc., of Hampton, VA 23666, has applied for a partially exclusive license to practice the invention disclosed in NASA Case No. LAR–15511–1, entitled ''MIR Environmental Effects Payload Handrail Clam/Pointer Device,'' for which a U.S. Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George M. Helfrich, Patent Counsel, Langley Research Center, Mail 212, Hampton, VA 23681; telephone (757) 864–9260; fax (757) 864–9190.

Dated: October 8, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–26676 Filed 10–16–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–123]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Tennessee Valley Performance Products, Inc., of Dayton, TN 37321, has applied for a partially exclusive license to practice the inventions described and claimed in NASA Case No. LAR–15205–1–CU, entitled ''Tough, Soluble Aromatic, Thermoplastic Copolyimides''; and NASA Case No. LAR–15205–2, entitled ''Process for Preparing Tough, Soluble, Thermoplastic Copolyimides''; which are all assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE: Responses to this notice must be received by December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; fax (757) 864–9190.

Dated: October 8, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–26673 Filed 10–16–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–39 and DPR–48 issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

The proposed amendments would add a mode of applicability to specification 3.2.3.D, Rod Position Indicator Channels.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of occurrences of any accident previously evaluated.

The proposed requirements for the Rod Position Indicator Channels being applicable in MODE 1 and MODE 2 are acceptable in that these are the only MODES in which power peaking factors are a concern, and the OPERABILITY of the Rod Position Indicator Channels has the potential to affect the safety of the plant. Control rod alignment limits ensure that power distribution and reactivity limits defined by the design power peaking and shutdown margin limits are preserved. In addition, the Rod Position Indicator Channels are not a precursor to any analyzed accident sequence.

The proposed Required Actions are similar to current Required Actions when the unit is in MODE 1 and MODE 2. In addition, since there is no safety significance for inoperable Rod Position Indicator Channels for shutdown modes, the proposed Required Actions provide appropriate compensatory actions with the unit in MODE 1 and MODE 2. Therefore, the initial conditions and system function assumed in the UFSAR have not changed. As such, the requirement to have OPERABLE control rod position indication for verification of control rod alignment limitations when the reactor is in MODE 1 and MODE 2 does not affect any UFSAR accident analysis.

Therefore, this change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not require a physical alteration of the plant (no new or different equipment will be installed to implement this change.) Control rod alignment limits ensure that power distribution and reactivity limits defined by the design power peaking and shutdown margin limits are preserved. The Technical Specifications will require OPERABLE Rod Position Indicator Channels in MODE 1 and MODE 2 when control rod alignment and insertion limits are required to maintain acceptable power distribution limits and shutdown margin.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The requirement to have OPERABLE Rod Position Indicator Channels when required by associated control rod alignment and insertion limits has been clarified. The LCO will continue to require OPERABLE Rod Position Indicator Channels and an associated Required Action to be in a mode where the Rod Position Indicator Channels are not required. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 18, 1996, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. 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 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 amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: 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 Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois, 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).

For further details with respect to this action, see the application for amendments dated October 4, 1996, 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 Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 10th day of October 1996.

For the Nuclear Regulatory Commission.

Donna M. Skay,

Acting Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–26589 Filed 10–16–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–245]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Northeast Nuclear Energy Company (NNECO/the licensee) for operation of the Millstone Nuclear Power Station, Unit 1 located in Waterford, Connecticut.

The proposed amendment would modify the applicability requirements for certain radiation monitors so that the radiation monitors are required to be operable only when secondary containment integrity is required to be operable; delineate when secondary containment integrity is required; modify standby gas treatment operability requirements; make editorial corrections to clarify the configuration of the radiation monitors; and revise the associated Bases sections.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10CFR50.92, NNECO has reviewed the proposed changes and concludes that the changes do not involve a significant hazards consideration (SHC) since the proposed change satisfies the criteria in 10CFR50.92(c). That is, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not significantly increase the probability of an accident since these changes only affect operability of equipment used for either identifying or mitigating accident conditions and have no impact on any initiating events for analyzed accidents previously evaluated.

The proposed change to Technical Specification 3.2.E makes the operability requirements of the radiation monitors consistent with operability requirements of the systems they automatically actuate and the Standard Technical Specifications NUREG–1433 (Rev 1) operability requirements for these monitors. The safety function of these radiation monitors is to monitor the reactor building and the steam tunnel ventilation exhaust plenums, and the room air at the refueling floor area to provide prompt indication of a gross release of radioactive material and, if setpoints are exceeded, actuate logic which initiates standby gas treatment and isolates normal ventilation. Conditions which could produce significant radiological releases and necessitate isolation of the reactor building and steam tunnel ventilation systems and initiation of the standby gas treatment system are only permitted to be established when secondary containment integrity is required. Administrative controls are established to ensure that secondary containment integrity is maintained when required to mitigate radiological consequences of postulated accidents. Proper application of procedural administrative controls ensure that evolutions, which may result in significant release of fission products, (including those not specifically delineated in the proposed technical specification) are evaluated to determine if secondary containment is required. When secondary containment integrity is not required, the plant is prohibited from performing activities which may result in a significant radiological release and the potential for an analyzed radiological accident is minimized. Therefore, the need for these radiation monitors to be operable at all times, including those instance when either secondary containment integrity or operability of the standby gas treatment system are not required provides no additional safety benefit and can be eliminated.

The proposed changes also ensure the requirements for the radiation monitors (Section 3.2.E), standby gas treatment system (Section 3.7.B), and secondary containment integrity (Section 3.7.C) are consistent.

The proposed changes to the Technical Specification 3.7.B, ''Standby Gas Treatment System,'' ensure standby gas treatment system operability is required whenever secondary containment integrity is required and ensures the operability requirements for the standby gas treatment system are specified for activities which have a potential of significant release of fission products. It maintains the requirement that standby gas treatment system operability is required whenever secondary containment integrity is not required. If secondary containment integrity cannot be maintained, activities which have the potential of a significant radiological release are immediately suspended and conditions established within 24 hours in which secondary containment integrity is no longer required. Requiring both trains of standby gas treatment system and three power sources (either two onsite and one offsite or one onsite and two offsite) provides adequate AC electrical power during a REFUELING OUTAGE. The operability requirements for the standby gas treatment system and power supplies remain unaltered for the fuel handling accident, the design bases accident during a REFUELING OUTAGE. Therefore, the consequences of the fuel handling accident, as analyzed, remain unaffected and the other less limiting transients remain bounded.

Currently, secondary containment integrity is required even when fuel is removed from the vessel if the control rods are not fully inserted. This requirement is not necessary for safety and can be eliminated. The proposed LIMITING CONDITION FOR OPERATION results in some cases where secondary containment is not required when it would have been previously (e.g., mode switch in REFUEL with no fuel movement or withdrawing a single control rod with the vessel head installed). However, none of these cases would place the plant in a condition which would result in a significant radiological release requiring secondary containment or standby gas treatment system

to mitigate the release. For example, with the mode switch in REFUEL the refueling interlocks would permit a single control rod to be withdrawn with the vessel head installed. The core design ensures that the reactor remains subcritical with the highest control rod worth withdrawn, therefore, a subcritical reactor with the vessel head installed has no potential for a significant radiological release.

Therefore, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident since these changes only affect operability requirements for equipment used either to identify or mitigate accident conditions and have no impact on any initiating events which could result in a new or different kind of accident from accidents previously evaluated.

None of these changes affect precursor events which could lead to a new or different kind of accident and therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety provided by the existing technical specifications is not significantly reduced by the proposed changes. While the radiation monitor applicability requirements are being reduced, the radiation monitors, standby gas treatment system and secondary containment will continue to remain operable during conditions in which there is a potential for gross release of fission products. The proposed changes are consistent with the requirements for the standby gas treatment system initiation and the secondary containment isolations which are activated by these radiation monitors. There are no accidents postulated which necessitate the use of these radiation monitors when plant conditions do not require secondary containment integrity to be operable. Conservatism is added in the requirements for secondary containment integrity and an additional LIMITING CONDITION FOR OPERATION is provided to address the condition when secondary containment integrity cannot be met.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 18, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut. 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 party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner

must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Phillip F. McKee: 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 Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, CT, 06103–3499, 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).

For further details with respect to this action, see the application for amendment dated August 29, 1996, 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 Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 10th day of October.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Northeast Utilities Project Directorate, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–26588 Filed 10–16–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Probabilistic Risk Assessment and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Probabilistic Risk Assessment and on Plant Operations will hold a joint meeting on October 30–November 1, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 30, 1996–8:30 a.m. until the conclusion of business.

Thursday, October 31, 1996–8:30 a.m. until the conclusion of business.

Friday, November 1, 1996–8:30 a.m. until the conclusion of business.

On October 30, 1996, the Subcommittees will continue their review of AEOD programs for risk-based analysis of reactor operating experience. On October 31–November 1, 1996, the Subcommittees will discuss the NRC staff's approach to codify risk-informed, performance-based regulation through development of Standard Review Plan (SRP) section(s) and associated regulatory guide(s). The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 9, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–26587 Filed 10–16–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 55–20726–SP; ASLBP No. 97–721–01–SP]

Ralph L. Tetrick; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972), and §§ 2.105, 2.700,

2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Ralph L. Tetrick

(Denial of Senior Reactor Operator's License)

The hearing, if granted, will be conducted pursuant to 10 C.F.R. Subpart L of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a denial by NRC Staff of Mr. Tetrick's senior reactor operator's license application and Mr. Tetrick's request for a hearing pursuant to 10 C.F.R. 2.103.

The Presiding Officer in this proceeding is Administrative Judge Peter B. Bloch. Pursuant to the provisions of 10 C.F.R. 2.722, the Presiding Officer has appointed Administrative Judge Peter S. Lam to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bloch and Judge Lam in accordance with C.F.R. 2.701. Their addresses are:

Administrative Judge Peter B. Bloch; Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Administrative Judge Peter S. Lam, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Rockville, Maryland, this 9th day of October 1996.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 96–26586 Filed 10–16–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting; Board of Governors; Notice of Vote to Close Meeting

At its meeting on October 7, 1996, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for November 4, 1996, in Washington, D.C. The members will be briefed on: (1) the Postal Rate Commission Docket No. MC96–3, Special Services Fees and Classification; and (2) a proposed filing with the Postal Rate Commission for Parcels/Expedited Mail; and (3) will consider funding approval for the Minneapolis, Minnesota, Information Service Center/Accounting Operations Center.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, McWherter, Rider and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Koerber, and General Counsel Elcano.

As to the first and second item, the Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c) of title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing.

As to the third item, the Board determined that pursuant to section 552b(c)(2), (3), (9) of title 5, United States Code; and section 410(c) of title 39, United States Code; and section 7.3(b), (c), and (i) of title 39, Code of Federal Regulations, the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)].

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(2), (3), (9) and (10) of title 5, United States Code; section 410(c) of title 39, United States Code; and section 7.3(b), (c), (i) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–26818 Filed 10–15–96; 2:48 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (The Dial Corp., Common Stock, $1.50 Par Value) File No. 1–7687

October 10, 1996.

The Dial Corp. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Pacific Stock Exchange, Inc. (''PSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the security has been listed on the PSE since July 18, 1939. The company has decided that it is in its best interest to voluntarily delist its shares in order to achieve administrative and cost savings, and to streamline its operations following the announced spin-off of its consumer products group. The company stated that trading on the PSE is limited to a small percentage of aggregate trading of the Company's shares.

Any interested person may, on or before October 30, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–26559 Filed 10–16–96; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

Novatek International, Inc.; Order of Suspension of Trading

October 15, 1996.

It appears to the Securities and Exchange Commission that questions have been raised about the adequacy and accuracy of publicly-disseminated information concerning Novatek International, Inc. concerning, among other things, Novatek's contracts, licenses, and financial condition, including the valuation of certain assets reported on Novatek's financial statements.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, October 15, 1996 through 11:59 p.m. EDT, on October 28, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Service List

The attached Order of Suspension of Trading, pursuant to Rule 12(k) of the Securities Exchange Act of 1934, has been sent to the following persons:

Novatek International, Inc., c/o John Klimek, Fishman & Merrick, P.C., 30 N. La Salle, Suite 3500, Chicago, IL 60602

Mr. Steven Wien, Compliance Director, Wien Securities Corp., 111 Pavonia Avenue, Jersey City, NJ 07310

Mr. Joe Durso, Assistant Compliance Director, Herzog, Heine Geduld, Inc., 525 Washington Blvd., 10th Floor, Jersey City, NJ 07310

G.V.R. Company, c/o Director of Compliance, 440 S. La Salle Street, Chicago, IL 60605

Ms. Lisa Seibold, National Financial Services Corporation, 55 Water Street, 22nd Floor, New York, NY 10041

Ms. Jackie West, Compliance Director, Troster Singer Stevens Rothchild Corp., 10 Exchange Place, 9th Floor, Jersey City, NJ 07302

Joseph Roberts & Co., c/o Compliance Director, 1900 N.W. Corporate Blvd., Suite 410–W, Boca Raton, FL 33433

Mr. Ken Worm, National Association of Securities Dealers, Anti-Fraud Division, 1735 K Street, N.W., Washington, DC 20006

Mr. Scott Donachie, Compliance Director, Knight Securities L.P., 525 Washington Blvd., Jersey City, NJ 07310

Ms. Lisa Antosiewicz, Sr. Vice President, M.H. Myerson & Co., Inc., 30 Montgomery Street, Jersey City, NJ 07302

Mr. Marcus Konig, President, Naib Trading Corporation, 800 E. Cyprus Creek #302, Ft. Lauderdale, FL 33334

Comprehensive Capital Corp., c/o Compliance Director, 1600 Stewart Ave., Suite 704, Westbury, NY 11590

Kenny Securities Corporation, 7711 Carondelet Ave., Suite 900, St. Louis, MO 63105

Vision Securities, Inc., c/o Compliance Director, 522 Willow Avenue, Cedarhurst, NY 11516

Mr. Gary Kaplowitz, Compliance Director, Fahnstock & Co., Inc., 110 Wall Street, New York, NY 10005

Fiero Brothers, Inc., c/o Compliance Director, 120 Broadway, 7th Floor, New York, NY 10271

Mr. Peter Scheib, Executive Vice President, Josephthal Lyons & Ross Inc., 200 Park Ave., 24th Floor, New York, NY, 10166

[FR Doc. 96–26780 Filed 10–15–96; 1:04 pm]

BILLING CODE 8010–10–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–109]

Initiation of Section 302 Investigation and Request for Public Comment: Practices of the Government of Indonesia Regarding Certain Incentives Related to the Promotion of the Indonesian Motor Vehicle Sector

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The Acting United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended, with respect to certain acts, policies and practices of the Government of Indonesia concerning the grant of conditional tax and tariff benefits intended to develop a motor vehicle sector in Indonesia. The United States alleges that these acts, policies and practices are inconsistent with certain provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Agreement on Trade-Related Investment Measures (TRIMS Agreement), the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), each administered by the World Trade Organization (WTO). USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on October 8, 1996. Written comments from the public are due on or before noon on Friday, November 15, 1996.

ADDRESS: Office of the United States Trade Representative, 600 17th Street N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joseph Damond, Director for Southeast Asia, (202) 395–6813, or Thomas Robertson, Associate General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: Section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(b)(1)), authorizes the USTR to initiate an investigation under chapter 1 of title III of the Trade Act (commonly referred to as ''section 301'') with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, *inter alia*, the denial of rights of the United States under a trade agreement, or acts, policies, and practices of a foreign country that violate or are inconsistent with the provisions of, or otherwise deny benefits to the United States under, any trade agreement.

On October 8, 1996, having consulted with the appropriate private sector advisory committees, the USTR determined that an investigation should be initiated to determine whether certain acts, policies and practices of Indonesia intended to promote the development of an Indonesian motor vehicle sector are actionable under section 301(a). Indonesia adopted in 1993 a system of incentives for manufacturers of motor vehicles and parts in the form of a reduction in duties on their imports of certain products and a reduction in taxes on the sale of motor vehicles. These benefits are conditional on compliance with domestic content requirements and local content requirements with regard to inputs. This system was expanded in February of 1996 to provide additional tax and tariff incentives designed to promote a ''national car'' that was produced by an

Indonesian company, carried a unique Indonesian trademark and had a gradually-increasing percentage of local content over the next three years. The system was last modified in June of 1996, when the ''national car'' policy was modified to permit the ''national car'' to be produced outside Indonesia.

The USTR believes that these acts, policies and practices are inconsistent with certain aspects of the GATT 1994, the TRIMs Agreement, the SCM Agreement and the TRIPS Agreement. In particular, the program appears to be inconsistent with the most-favored-nation treatment and national treatment provisions found in Articles I and III of the GATT 1994; the prohibition in Article 2 of the TRIMs Agreement on investment measures that are inconsistent with the national treatment and quantitative restriction provisions in the GATT 1994; the prohibition on certain subsidies in Articles 3, 6, and 28.2 of the SCM Agreement; and the national treatment provision and prohibition on unjustifiable encumbrances on the use of trademarks found in Articles 3, 20, and 65.5 of the TRIPs Agreement. The United States has reserved the right to raise additional factual claims and legal matters during the course of the consultations.

Investigation and Consultations

As required in section 303(a) of the Trade Act, the USTR has requested consultations with the Government of Indonesia regarding the issues under investigation. The request was made pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 of the GATT 1994, Article 8 of the TRIMs Agreement, Articles 7 and 30 of the SCM Agreement, and Article 64 of the TRIPS Agreement. If the consultations do not result in a satisfactory resolution of the matter, the USTR will request the establishment of a panel pursuant to Article 6 of the DSU.

Under section 304 of the Trade Act, the USTR must determine within 18 months after the date on which this investigation was initiated, or within 30 days after the conclusion of WTO dispute settlement procedures, whichever is earlier, whether any act, policy, or practice or denial of trade agreement rights described in section 301 of the Trade Act exists and, if that determination is affirmative, the USTR must determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of Indonesia which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on Friday, November 15, 1996. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

Comments will be placed in a file (Docket 301–109) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–109) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 96–26592 Filed 10–16–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of the Noise Compatibility Program for Chico Municipal Airport (CIC), Chico, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by City of Chico, California under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On April 23, 1993 the FAA determined that the Noise Exposure Maps submitted by City of Chico under Part 150 were in compliance with applicable requirements. On September 18, 1996, the Associate Administrator for Airports approved the Noise Compatibility Program.

EFFECTIVE DATE: The effective date of the FAA's approval of the Noise Compatibility Program is September 18, 1996.

FOR FURTHER INFORMATION CONTACT: John L. Pfeifer, Manager, Airports District Office, SFO–600, 831 Mitten Road, Burlingame, California 94010, Telephone: (415) 876–2778. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Chico Municipal Airport, effective September 18, 1996. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law. Specific limitations with respect to the FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Burlingame, California.

The City of Chico, California submitted to the FAA on December 16, 1992 the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from August 1991 through March 1995. The Noise Exposure Maps were determined by the FAA to be in compliance with applicable requirements on April 23, 1993. Notice of this determination was published in the Federal Register on May 3, 1993. The study contains a proposed Notice Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions form the date of study completion and beyond the year 1996. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 104(b) of the Act. The FAA began its review of the program on March 22, 1996 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 15 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective September 18, 1996. Outright approval was granted for 13 of the specific program elements: Retention of existing altitude requirements; Existing posted directional signs; Existing planning and zoning consideration of noise; Existing requirement of avigation easements; Periodic noise exposure map updates; Overflight protection zone; Easement dedication; Notice of airport noise; Requirement for acoustical studies within the areas of CNEL 55dB and above; Preferential approach and departure flight tracks; Establish interagency coordination procedures/maintain public information; Post informational signs at takeoff end of runways; Noise abatement advisories; Flight training/compliance; Increased pilot awareness. One (1) element was disapproved for the purposes of Part 150 upon the finding that it is more properly categorized under Part 77. The other measure, a suggested modification to the VOR approach to Runway 31R was disapproved pending submission of adequate information to make the informed analysis concerning the effectiveness of this measure.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on September 18, 1996. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Chico Municipal Airport, Chico, California.

Issued in Hawthorne, California on October 4, 1996.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 96–26662 Filed 10–16–96; 8:45 am]

BILLING CODE 4910–13–M

[Docket No. 28611]

Finding of No Significant Impact

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Finding of no significant impact.

SUMMARY: The FAA prepared an Environmental Assessment (EA) to evaluate the Alaska Aerospace Development Corporation's (AADC) proposal to construct and operate a launch site at Narrow Cape on Kodiak Island, Alaska, and issued a proposed Finding of No Significant Impact (FONSI) for public comment on June 25, 1996, for 30 days. After reviewing and analyzing currently available data and information on existing conditions, project impacts, and measures to mitigate those impacts, and after considering public comments, the Office of the Associate Administrator for Commercial Space Transportation (AST) has determined that licensing the operation of the proposed launch site is not a major Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore the preparation of an environmental impact statement is not required and AST is issuing a Finding of No Significant Impact (FONSI).

FOR A COPY OF THE KODIAK LAUNCH COMPLEX ENVIRONMENTAL ASSESSMENT CONTACT: Mr. Nikos Himaras, Office of the Associate Administrator for Commercial Space Transportation, Licensing and Safety Division, 400 Seventh Street, SW., Washington, D.C. 20590; phone (202) 366–2455; or refer to the following Internet address: http://www.dot.gov/dotinfo/faa/cst/cst.html.

DATES: The FAA made its proposed FONSI available for public comment on June 25, 1996, for 30 days.

Proposed Action

The FAA licenses the operation of non-Federal launch sites in the United States, such as AADC's proposed construction and operation of Kodiak Launch Complex (KLC), a commercial space launch site on Kodiak Island, Alaska, pursuant to 49 U.S.C. 70101–70119, formerly the Commercial Space Launch Act. Licensing the operation of a launch site is a proposed Federal action requiring environmental analysis by the FAA in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* Upon receipt of a complete application, the Associate Administrator for Commercial Space Transportation must determine

whether to issue a license to AADC to operate. Environmental findings are required for a license evaluation.

A recently enacted Interstate Commerce Commission sunset legislation (Public Law 104–88) addresses National Environmental Policy Act applicability to licensing actions (see Page 1–5 of the EA). This provision does not affect preparation of the KLC EA but obviates the need for preparation of an environmental impact statement if the Department of the Army has issued a permit for the activity and the Army Corps of Engineers has found the activity has no significant impact. The Department of the Army Corps of Engineers proposes to find that the activity would have no significant impact and is holding permit issuance pending AST's issuance of the FONSI.

The launch site would be located on a 3,100-acre tract of state-owned land on a peninsula known as Narrow Cape. Construction for the project would involve (1) Upgrading about 3 km of gravel access road; (2) creating two laydown areas for construction equipment; (3) building a launch control center, a payload processing facility, the launch area, and a water pump house; and (4) use of existing quarry sites to obtain fill material. Construction would disturb approximately 43 acres, including about 1.5 acres of wetlands, most of which is adjacent to the gravel road leading to the launch complex.

To launch launch vehicles from KLC, fee-paying customers would (1) Transport launch vehicle components, payloads, associated parts, and staff to the site; (2) assemble vehicle components and payloads and prepare for launch; and (3) launch and track payloads into orbit. Operations would begin in 1998, and about 3 launch vehicles per year would be launched during the first four years. Anticipated frequency of use would increase to a maximum of 9 launches per year over the 22 years of operation. Materials would be transported to Kodiak Island by container ship, ocean barge, or airplane, and transported to the KLC by truck. Initially, approximately 100 people would be onsite for 6 weeks before a launch. Operations could eventually involve up to 14,000 person-days per year onsite. The KLC would provide the site for launching smaller solid rocket motor launch vehicles such as Lockheed Martin Launch Vehicles 1 and 2, Minuteman II (modified for commercial use), Taurus, and Conestoga.

Alternatives Considered

The alternatives available to AST consist of: (1) The proposed action, licensing the operation of a launch site at KLC, and (2) the no action alternative. AADC has conducted a state-wide siting survey that evaluated 27 alternative locations for a space launch facility. AST has given substantial weight to the preferences of AADC in selecting the proposed site, because AST's review indicates that there is no substantially superior alternative site, from an environmental standpoint, that is operationally feasible.

The KLC was designed to avoid impacts to wetlands to the extent practicable. The payload processing area and the access road to the launch area were re-sited to avoid wetland disturbance, and the launch control center was redesigned to minimize wetland impacts. The launch control center, however, must be located a minimum distance from the launch area and must have a direct view of the launch area. The only alternative for siting the launch control center to avoid completely wetlands would have required access road construction that would have affected more wetlands. The only alternative that would have avoided wetlands destruction in upgrading Pasagshak Point Road would have involved extensive road relocation, substantial destruction of non-wetland habitat, and prohibitive expense. Because of these factors, no practicable alternatives to the proposed construction were available and the proposed action includes all practicable measures to minimize harm to wetlands which may result from the project (See Section 4.5.1.1 of the EA). The Alaska District of the U.S. Army Corps of engineers issued a public notice regarding project construction and wetlands involvement on September 7, 1995, providing the public and appropriate state and Federal agencies an opportunity for early review of wetland impacts. The Alaska District of the U.S. Army Corps of Engineers also issued a permit evaluation and decision document regarding project construction and wetlands involvement on November 7, 1995, confirming that the proposed filling of 1.43 acres of wetlands with clean sand and gravel is not anticipated to measurably impact the substrate of the immediate vicinity of the project site. They further confirmed that the proposed action should have no appreciable impact on the drainage pattern of adjacent wetlands, the existing water quality, or stream flow in the area of the project site.

Environmental Consequences

Ecological Resources

Construction would disturb vegetation on 43 acres of the site. With the exception of wetlands, the disturbed areas are not considered high-quality habitat. The 1.5 acres of wetlands that would be disturbed constitute 0.2% of the 790 acres of wetlands on the 3,100-acre site. No practicable alternatives to disturbing wetlands are available and, based on the small areas involved, the wetland and vegetation losses are judged to be not significant.

Noise from construction activity would temporarily disturb areas immediately adjacent to roads and proposed new facilities, but the valuable wildlife habitats, mostly along the shoreline and offshore, would not be significantly affected. Construction activities could expose ducks and seabirds resting and feeding in the waters off Narrow Cape to peak noise levels of approximately 72 dBA, which is below the 80–90 dBA known to disturb water fowl and wildlife. The closest site believed to have a bald eagle nest is located at least 3,000 feet from construction activities, a distance substantially greater than the 660-foot buffer zone recommended by the Fish and Wildlife Service, United States Department of the Interior (DOI), to protect nesting eagles.

Launch vehicle launches would cause occasional noise levels sufficient to cause startle responses in birds and marine mammals. However, these brief disturbances, three to nine times per year, are not anticipated to have lasting or significant adverse impacts on wildlife, including threatened or sensitive species. Emissions from launch vehicle propulsion would be occasional and widely and rapidly dispersed, and no significant ecological effects would be expected. FAA has completed informal consultation with the National Marine Fisheries Service (NMFS) under Section 7(a) of the Endangered Species Act (ESA) of 1973, with respect to the Steller sea lion which is a threatened species. Based on current data, the FAA does not expect launch noise levels to greatly disturb or cause significant adverse impacts to Steller sea lions.

Noise

Launch noise would be audible on Kodiak Island for a distance of approximately 12 miles for approximately 1 minute. Sonic booms would be heard only on the open ocean. Given the infrequency and short duration of launches, no significant

adverse impacts to the public would be expected.

Safety

The proposed KLC facilities would be located so that launch vehicles would fly primarily over open water. A flight and operational safety program would be implemented to manage risks to workers and the public. All safety concerns will be addressed as part of AST's licensing process.

Visual and Cultural Resources

Construction and operation of the proposed KLC would affect the visual resources of Narrow Cape by placing five new man-made structures into a relatively isolated area. The largest of these, the launch service structure would be 170 feet high, 40 feet wide and 70 feet long, and, because of the relatively flat terrain, would be visible over most of the cape and from offshore. Because the site is isolated and has few viewers, the visual impacts are considered non-significant. Impacts to subsistence harvesting and archaeological or historic sites would be minor.

Air and Water

Air quality at the proposed KLC site is excellent, and the site area is designated an attainment area, as defined under the Clean Air Act and implementing regulations. Because of its location in an attainment area, no conformity review is required for the KLC. Impacts of construction to both air and water would be short-term and minor. Launch vehicle launch emissions of hydrogen chloride and aluminum oxide would slightly and temporarily degrade local air quality, and the hydrochloric acid (HCl) formed could be deposited in nearby surface waters. KLC will conduct smaller and fewer launches per year than have been conducted by the Air Force. Maximum concentrations of airborne HCl resulting from KLC launches would not exceed the Air Force ceiling value for general public exposure of 10 parts per million. Maximum concentrations of airborne particulates resulting from launches would not exceed the National Ambient Air Quality Standard of a 24-hour average of 150 micrograms per cubic meter for PM–10 (particulate matter less than 10 microns in diameter). The PM–10 standard is normally applied to point-source, industrial type emissions. KLC launches will be relatively infrequent with emissions that disperse quickly. The area is designated attainable for all pollutants. A determination of conformity with the State Air Quality Implementation Plan is not required pursuant to Section 176(c) of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, as implemented by 40 CFR Part 51. The impacts of acid deposition in the nearby surface waters would be minor because of relatively low HCl emissions from the small rockets planned for launch at KLC, the small number of launches per year, and the apparent capacity of local streams and lakes for buffering acid inputs. Because rocket launch impacts to air and water would be relatively minor, occasional, and short-term, no significant impacts would be expected to occur.

Geology and Soil Resources

Soil erosion control practices, implemented under the Stormwater Pollution Prevention Plan, would keep impacts to soils minor. Changes in soil pH resulting from acid deposition from launch combustion products would be non-significant, because KLC soils already have relatively low pHs.

Socioeconomics

Construction of the proposed KLC would result in expenditures of $18–24 million on goods and services, which would have positive effects on the local and regional economies. Community resources and infrastructure are adequate to support the construction and operational workforces. No impacts to commercial fishing are anticipated, because launch activities at Narrow Cape will not cause restrictions on access to nearby waters. Launch operations will be closely coordinated with the U.S. Coast Guard; therefore, no impacts to Coast Guard activities are anticipated.

Section 4(f)

Impacts to recreational resources would be small. The site would be closed immediately before and during launch activities, but would remain open for recreational activities at all other times. No significant impacts to the Pasagshak State Recreation Area or the Kodiak National Wildlife Refuge, located about 4 miles and 40 miles respectively from the KLC site, would be expected because of the distances and the limited extent of construction and operational activities.

Land Use

The proposed action underwent a review for consistency with standards established under the Alaska Coastal Management Program (Alaska Administrative Code, Title Six, Chapter 80) and was issued a final consistency determination on January 18, 1996 (see attached letter from the State of Alaska to AADC).

Monitoring and Mitigation

As part of the licensing process for the KLC site, AADC is developing an enhanced KLC Natural Resources Management Plan that will address monitoring and mitigation activities for aspects of the site and environs, including special status species, as discussed in Section 5.13 of the EA.

To address concerns expressed by the U.S. Fish and Wildlife Service (FWS) about impacts on birds in the vicinity of the project, though this exceeds requirements under the NEPA and ESA, the AADC and FAA have agreed to enhance the existing KLC avian baseline survey and monitoring plan to further scientific research in this area. Avian species to be monitored are the bald eagle (protected under the Bald Eagle Protection Act), and migratory seabirds, seaducks, and shorebirds (protected under the Migratory Bird Treaty Act). The AADC shall, within 30 days of the issuance of the FONSI, consult with the Fish and Wildlife Service Field Supervisor (U.S. Fish and Wildlife Service, Ecological Services Anchorage Field Office, 605 West 4th Avenue, Room, G–62, Anchorage, Alaska 99501, 907–271–2787) and the FAA to initiate the enhancement of the KLC avian baseline survey and monitoring plan. The KLC avian baseline survey and monitoring plan, developed in cooperation with the Fish and Wildlife Service, will be completed as soon as possible to facilitate initiation of the surveying and monitoring activities, and will be submitted to the FAA for approval and incorporation into the KLC Natural Resources Management Plan for implementation. If monitoring detects adverse impacts greater than those identified in the EA, AADC would take appropriate action to mitigate these impacts. The FAA will consider the adequacy of the KLC Natural Resources Management Plan as part of its evaluation of AADC's license application. Per the FWS letter to AST dated October 2, 1996, FWS's concerns have been addressed and they do not object to the issuance of a FONSI.

Major Issues/Public Comments

The FAA received comments on the EA from three Federal agencies, three organizations, and nine individuals (all residents of Kodiak Island). The FAA has also discussed the issues of concern with the Coast Guard, the National Marine Fisheries Service (NMFS) and the U.S. Department of Interior, Fish and Wildlife Service (FWS). The major issues raised and the FAA's resolution of these are summarized as follows:

Access to coastal waters and airspace: Concerns were raised that launch activities would restrict access to waters important to navigation near Narrow Cape. The FAA notes that impacts to shipping, fishing, and Coast Guard boat patrols would be minimal, as no restrictions would be placed on waters near the launch site. With respect to airspace conflicts, AADC will use the established methods to warn flyers of the short and infrequent need to avoid airspace over the launch site, and that launch activity will be suspended if aircraft enter the avoidance zone by accident or under emergency conditions.

Impacts to Steller Sea Lions: In a letter dated August 21, 1996, NMFS concurred with FAA's opinion that launch noise will not cause reactions by Steller sea lions greater than minor behavioral changes. However, because this is based on predicted rather than measured noise levels, NMFS has requested, and AADC has agreed to perform, pre-launch monitoring of sea lion behavior and monitoring of noise levels at sea lion haulouts for at least the first five launches.

Impacts to migratory birds and other wildlife: The FWS raised issues regarding the adequacy of the baseline information regarding wildlife and the potential for adverse impacts to wildlife. The FWS requested that further studies be conducted at the project site to better predict impacts on fish and wildlife resources. AADC will perform monitoring that will generate additional biological information, and that the FAA's issuance of a launch operations license will consider the adequancy of AADC's Natural Resources Management Plan.

Air Quality Impacts: FAA responded to comments from the Environmental Protection Agency (EPA) Region 10 that were received 75 days beyond closing of the official comment period. EPA raised concerns regarding air quality modeling analyses and the application of models and guidelines in the EA. The modeling and air quality analyses were done using extremely conservative assumptions and input parameters such that FAA is confident of the reliability of these analyses in supporting the significance of potential anticipated impacts. Further, the Alaska Department of Environmental Conservation (ADEC) concurred and advised that no air permit or modeling requirements were necessary. The INPUFF model and U.S. Air Force guideline for exposure to HCl are relevant and appropriate for these analyses.

Determination

After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(c) of NEPA. Therefore, an Environmental Impact Statement for the proposed action is not required.

Issued in Washington, DC, on October 8, 1996.

Frank C. Weaver,

Associate Administrator for Commercial Space Transportation.

Attachments

FOR A COPY OF THE ATTACHMENTS OR OTHER REFERENCED MATERIAL CONTACT: Mr. Nikos Himaras, Office of the Associate Administrator for Commercial Space Transportation, Licensing and Safety Division, 400 Seventh Street, SW., Washington, D.C. 20590; phone (202) 366–2455; or refer to the following Internet address: http://www.dot.gov/dotinfo/faa/cst/cst.html.

[FR Doc. 96–26663 Filed 10–16–96; 8:45 am]

BILLING CODE 4910–13–P

[Summary Notice No. PE–96–50]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 18, 1996. Late filed comments will be considered so far as possible without incurring expense or delay in the issuance of the final document.

ADDRESSES: Send comments or any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Marisa Mullen (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on October 10, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28707.

Petitioner: Bankair Inc.

Sections of the FAR Affected: 14 CFR 135.87(a) and 121.221(a)(4).

Description of Relief Sought: To permit Bankair Inc., to add 6 Lear Jet aircraft under 14 CFR 135 that do not meet all the cargo compartment certification requirements of 14 CFR 25. The aircraft, previously modified under FAA Field Approvals, will be used to carry bank paper (checks, notes, bonds) while awaiting issuance of its pending Supplemental Type Certificate (STC). The STC will allow 100 percent conversion from a passenger to cargo configuration.

[FR Doc. 96–26665 Filed 10–16–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Public Scoping Meeting for Road Reconstruction; Moran Junction to Dubois, WY

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) for proposed road reconstruction in the Moran Junction to Dubois vicinity of northwestern Wyoming will be prepared. The EIS will be prepared in cooperation with the Wyoming Department of Transportation (WYDOT) and the U.S. Forest Service (USFS).

FOR FURTHER INFORMATION CONTACT: Galen Hesterberg, Statewide Operations Engineer, FHWA, 1916 Evans, Cheyenne, WY 82001, (307) 772–2012, extension 45, FAX (307) 772–2011, or Tim Stark, Environmental Services, WYDOT, P.O. Box 1708, Cheyenne, WY 82003–1708, (307) 777–4379.

SUPPLEMENTARY INFORMATION: The proposed highway reconstruction project will consist of reconstruction of the existing U.S. Highway 26/287 beginning at Kp 4.8 (MP 3.0) and ends at Kp 65.7 (MP 40.7 and the east Forest Boundary) in Fremont and Teton Counties. The purpose of this proposal is to provide a modern two lane road with emergency parking shoulders. Line and grade will be adjusted to improve sight distance and safety of the roadway while minimizing impacts to the natural environment. All bridges will be replaced. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include (1) taking no action; (2) using alternate travel modes; and (3) various alignment and design alternatives. The development of these specific alternatives is an ongoing process that will incorporate features brought forth during public scoping in addition to those identified by project engineers as preliminary road design activities progress. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who express an interest in this proposal. A series of public meetings will be held. In addition, the public will be given the opportunity to hold a Public Hearing. Public notice will be given of the time and place of any meetings or hearings. The draft EIS will be available for public and agency review and comment prior to a public hearing. No formal scoping meetings or hearings have been scheduled at this time. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the above address.

Issued on: October 3, 1996.

J. Michael Bowen,

Assistant Division Administrator.

[FR Doc. 96–26612 Filed 10–16–96; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 96–107; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992 Mercedes-Benz 300TE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Mercedes-Benz 300TE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1992 Mercedes-Benz 300TE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because: (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 18, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Pierre Enterprises, Southeast, Inc. of Ft. Pierce, Florida (''Pierre'') (Registered Importer 93–016) has petitioned NHTSA to decide whether 1992 Mercedes-Benz 300TE passenger cars are eligible for importation into the United States. The vehicle which Pierre believes is substantially similar is the 1992 Mercedes-Benz 300TE that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 Mercedes-Benz 300TE to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Pierre submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Mercedes-Benz 300TE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Mercedes-Benz 300TE is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake*

Systems, 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 111, *Rearview Mirrors,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1992 Mercedes-Benz 300TE complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlight assemblies; (b) installation of U.S.-model taillamp assemblies; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a warning buzzer relay and a warning buzzer in the steering lock electrical circuit.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that the vehicle is equipped with a U.S.-model driver's side air bag and knee bolster.

Standard No. 214 *Side Impact Protection:* installation of reinforcing tubes.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve.

Additionally, the petitioner states that a VIN plate must be installed inside the non-U.S. certified 1992 Mercedes-Benz 300TE so that it can be read from the left windshield pillar, and a VIN reference label must be affixed to the edge of the door or latch post nearest the driver, to satisfy the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 9, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–26564 Filed 10–16–96; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. Application numbers with the suffix ''P'' denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before November 1, 1996.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION:

Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
970–M	Callery Chemical Corp., Pittsburgh, PA (See Footnote 1)	970
6610–M	ARCO Chemcial Co., Newtown Square, PA (See Footnote 2)	6610
8723–M	Dyno Nobel Inc., Salt Lake City, UT (See Footnote 3)	8723
8723–M	Austin Powder Co., Cleveland, OH (See Footnote 4)	8723
8723–M	Taylor Minster Leasing, Inc., Houston, TX (See Footnote 5)	8723
9266–M	ERMEWA, Inc., Houston, TX (See Footnote 6)	9266
9830–M	Worthington Cylinder Corp., Columbus, OH (See Footnote 7)	9830
10147–M	EFI Corp., Fremont, CA (See Footnote 8)	10147

Application No.	Applicant	Modification of exemption
11180–M	HMT Associates, Washington, DC (See Footnote 9)	11180
11275–M	Dorbyl Engineering Container Division (DHE), Denver, CO (See Footnote 10)	11275
11382–M	Structural Composities Industries, Pomona, CA (See Footnote 11)	11382
11579–M	Dyno Nobel Inc., Salt Lake City, UT (See Footnote 12)	11579
11613–M	Monsanto Co., St. Louis, MO (See Footnote 13)	11613
11703–M	Walter Kidde Portable Equipment, Inc., Meborne, NC (See Footnote 14)	11703
11714–M	Accent Stripe, Inc., Orchard Park, NY (See Footnote 15)	11714

(1) To modify the exemption to provide for addition of stainless steel valves on DOT Specification 3AA cylinders for use in transporting Division 2.3 material.

(2) To modify the exemption to provide for water and rail as additional modes of transportation for shipment of Division 5.2 Type F, liquid.

(3) To modify the exemption to provide for rail as an additional mode of transportation.

(4) To modify the exemption to provide for alternative stowage of shorter 350 feet DOT-Specification IM–102 portable tanks used for transporting Division 1.5 explosives and Division 5.1 oxidizers by cargo vessel.

(5) To modify the exemption to provide for the transportation of Class 3 material in insulated stainless steel IM–101 tank containers.

(6) To modify the exemption to provide for Division 2.3 material in insulated portable tanks in accordance with Special Provision B14.

(7) To modify the exemption to provide for technical changes to DOT-Specification 4BA cylinders for use in transporting various classes of hazardous materials.

(8) To modify the exemption to provide for technical modifications design of non-DOT specification cylinders for use in shipment of certain Division 2.1 and 2.2 gases.

(9) To modify the exemption to provide for Class 9 and Division 4.1 material and exempt from the packaging, marking, labeling, and placarding requirements of hazardous materials regulations.

(10) To modify exemption to provide for additional design non-DOT specification portable tanks, mounted in ISO frames, for use in transportation certain Division 2.1 and 2.2 gases.

(11) To modify the exemption to increase the water capacity of up to 200 lbs. and service pressure of up to 5,000 psig and authorize the use of type S fiber glass roving for non-DOT specification cylinders.

(12) To modify the exemption to provide for oxidizing liquid, n.o.s., Division 5.1, as an additional class of hazardous materials.

(13) To modify the exemption to provide for unloading of Class 3 and Division 6.1 material to remain connected during unloading process without the physical presence of an unloader.

(14) To reissue the exemption originally issued on an emergency basis to manufacture, mark and sale DOT specification 39 cylinders equipped with alternative pressure relief devices.

(15) To reissue the exemption originally issued on an emergency basis to authorize the transportation of non-DOT specification containers for use in transporting paint or epoxy for use in road striping.

Application No.	Applicant	Parties to exemption
3142–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	3142
3142–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	3142
3216–P	Solvay Fluorides, Inc., Greenwich, CT	3216
3549–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	3549
3549–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	3549
4453–P	American West Explosives, Inc., Plymouth, CA	4453
4453–P	Energetic Solutions, Inc., Dallas, TX	4453
4588–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	4588
4588–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	4588
4588–P	Lawrence Livermore National Laboratory, Livermore, CA	4588
5022–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	5022
5022–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	5022
5206–P	Energetic Solutions, Inc., Dallas, TX	5206
5948–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	5948
5948–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	5948
5948–P	DynCorp of Colorado, Inc., Golden, CO	5948
6325–P	Energetic Solutions, Inc., Dallas, TX	6325
6530–P	Airgas, Inc., Cheyenne, WY	6530
6658–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	6658
6658–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	6658
6743–P	Energetic Solutions, Inc., Dallas, TX	6743
6922–P	Solvay Fluorides, Inc., Greenwich, CT	6922
6929–P	Lockheed Martin Energy Research Systems, Inc., Oak Ridge, TN	6929
6929–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	6929
6962–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	6962
6962–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	6962
6971–P	Restek Corporation, Bellefonte, PA	6971
7269–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	7269
7269–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	7269
7616–P	Mississippi Export Railroad Company, Moss Point, MS	7616
7835–P	Mountain Electronic Gases, Colorado Springs, CO	7835
8307–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	8307
8307–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	8307
8451–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	8451
8451–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	8451
8451–P	MacKenzie Corporation, Bush, LA	8451
8451–P	Mason & Hanger Corporation, Middletown, IA	8451
8451–P	Dayron, Orlando, FL	8451
8451–P	DynCorp of Colorado, Inc., Golden, CO	8451

Application No.	Applicant	Parties to exemption
8453–P	Energetic Solutions, Inc., Dallas, TX	8453
8554–P	American West Explosives, Inc., Plymouth, CA	8554
8554–P	Cook Slurry Company, Gilbert, MN	8554
8554–P	Energetic Solutions, Inc., Dallas, TX	8554
8723–P	American West Explosives, Inc., Plymouth, CA	8723
8723–P	Mining Services International, Salt Lake City, UT	8723
8723–P	Energetic Solutions, Inc., Dallas, TX	8723
8723–PM	Taylor Minster Leasing, Inc., Houston, TX (See Footnote 1)	8723
8815–P	Energetic Solutions, Inc., Dallas, TX	8815
9275–P	The Body Shop, Wake Forest, NC	9275
9617–P	American West Explosives, Inc., Plymouth, CA	9617
9623–P	American West Explosives, Inc., Plymouth, CA	9623
9623–P	Energetic Solutions, Inc., Dallas, TX	9623
9689–P	ICI Americas, Inc., Wilmington, DE	9689
9723–P	Safeway Chemical Transportation, Inc., Wilmington, DE	9723
9723–P	McCutcheon Enterprises, Inc., Apollo, PA	9723
9769–P	M P Environmental Services, Inc., Bakersfield, CA	9769
9769–P	Safeway Chemical Transportation, Inc., Wilmington, DE	9769
9781–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	9781
9781–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	9781
10001–P	Weldstar Company, Aurora, IL	10001
10067–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	10067
10067–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	10067
10101–P	Airgas, Inc., Cheyenne, WY	10101
10114–P	Hawaiian Airlines, Honolulu, HI	10114
10114–P	Aloha Airlines, Inc., Honolulu, HI	10114
10300–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	10300
10300–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	10300
10300–P	Allied Signal, Inc., Morristown, NJ	10300
10536–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN	10536
10536–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN	10536
10536–P	Los Alamos National Laboratory, Los Alamos, NM	10536
10536–P	Allied Signal, Inc., Morristown, NJ	10536
10594–P	Lockhead Martin Energy Systems, Inc., Oak Ridge, TN	10594
10594–P	Lockhead Martin Energy Research Corporation, Oak Ridge, TN	10594
10751–P	American West Explosives, Inc., Plymouth, CA	10751
10880–P	American West Explosives, Inc., Plymouth, CA	10880
10885–P	Lockhead Martin Energy Systems, Inc., Oak Ridge, TN	10885
10885–P	Lockhead Martin Energy Research Corporation, Oak Ridge, TN	10885
10885–P	Los Alamos National Laboratory, Los Alamos, NM	10885
10885–P	Allied Signal, Inc., Morristown, NJ	10885
10987–P	Industrail Gas Products & Supply, Inc., Colorado Springs, CO	10987
11109–P	Alaska Marine Lines, Inc., Seattle, WA	11109
11153–P	Tri-State Motor Transit, Inc., Byron, CA	11153
11153–P	ROMIC Environmental Technologies Corporation, East Palo Alto, CA	11153
11156–P	American West Explosives, Inc., Plymouth, CA	11156
11156–P	Energetic Solutions, Inc., Dallas, TX	11156
11173–P	Assured Space Access, Inc., Chandler, AZ	11173
11173–P	Earthwatch, Inc., Longmont, CO	11173
11197–P	Kemwater North America Company, Antioch, CA	11197
11230–P	American West Explosives, Inc., Plymouth, CA	11230
11230–P	Energetic Solutions, Inc., Dallas, TX	11230
11230–P	Mountain-Valley Explosives Co., Inc., Paintsville, KY	11230
11294–P	ROMIC Environmental Technologies Corporation, East Palo Alto, CA	11294
11296–P	Republic Environmental Systems (Transp. Group), Hatfield, PA	11296
11373–P	American Industrial Chemical Corporation, Smyrna, GA	11373
11373–P	Kramer Chemicals, Inc., Glen Rock, NJ	11373
11373–P	Kramer Chemicals, Inc., Johnstown, NY	11373
11373–P	G.M. Gannon Company, Warwick, RI	11373
11383–P	Astrotech Space Operations, L.P., Titusville, FL	11383
11458–P	Warner-Lambert Company, Inc., Morris Plains, NJ	11458
11516–P	Madison Price Manufacturer's, Inc., Spooner, WI	11516
11588–P	Medical Waste Transport, Inc., Sioux Falls, SD	11588
11602–P	Mercury Marine, Division of Brunswick Corp., Stillwater, OK	11602
11602–P	Mercury Marine, Division of Brunswick Corp., Fond Du Lac, WI.	
11602–P	Bodine Aluminum, Inc., Troy, MO	11602
11602–P	Bodine Aluminum, Inc., St. Louis, MO	11602
11602–P	The William L Bonnell Company, Inc., Carthage, TN	11602
11602–P	The William L Bonnell Company, Inc., Newnan, GA	11602
11602–P	Vanalco, Inc., Vancouver, WA	11602
11602–P	Aluminum Resources, Inc., Smyrna, TN	11602
11602–P	MICA Metals, Inc., Bedford, IN	11602
11602–P	Wells Aluminum Corporation, Baltimore, MD	11602

Application No.	Applicant	Parties to exemption
11602–P	Institute of Scrap Recycling Industries, Washington, DC	11602
11602–P	Tobian Metals, Inc., St. Joseph, MI	11602
11602–P	Custom Alloy Scrap Sales, Inc., Oakland, CA	11602
11602–P	ADC, L.P. d/b/a Anderson Die Castings, Wheeling, IL	11602
11602–P	Taber Metals Limited Partnership, Russellville, AR	11602
11602–P	Taber Metals Gulfport, L.P., Gulfport, MS	11602
11602–P	Tower Metal Products, L.P., Fort Scott, KS	11602
11602–P	Tower Extrusions, LTD., Olney, TX	11602
11602–P	Louis J. Homan Metals Co., Cincinnati, OH	11602
11602–P	Rusk Metal Company, Dubuque, IA	11602
11602–P	American Meter Company, Nebraska City, NE	11602
11602–P	Walker Die Casting, Inc., Lewisburg, TN	11602
11602–P	Atemco, Bryan, TX	11602
11602–P	Stahl Specialty Co., Kingsville, MO	11602
11602–P	Superior Aluminum Castings, Inc., Independence, MO	11602
11602–P	Systems Waste Removal, Kentwood, MI	11602
11602–P	American Foundrymen's Society, Inc., Des Plaines, IL	11602
11602–P	North American Die Casting Association, Rosemont, IL	11602
11602–P	Non-Ferrous Founders' Society, Des Plaines, IL	11602
11619–P	National Aeronautics & Space Administration (NASA), Washington, DC	11619
11624–P	M P Environmental Services, Inc., Bakersfield, CA	11624
11624–P	Tri-State Motor Transit, Inc., Byron, CA	11624
11624–P	City Environmental Services, Inc. of Florida, Tampa, FL	11624
11624–P	EOG Environmental, Milwaukee, WI	11624
11624–P	Rollins Environmental, Inc., Wilmington, DE	11624
11624–P	Inland Waters Pollution Control, Inc., Detroit, MI	11624
11624–P	City Environmental, Inc., Detroit, MI	11624
11624–P	Heritage Transport, Inc., Indianapolis, IN	11624
11624–P	Advanced Environmental Technical Services, Flanders, NJ	11624
11740–P	Alliant Techsystems, Inc., New Brighton, MN	11740

[1] To modify the exemption to provide for the transportation of Class 3 material in insulated stainless steel IM–101 tank containers.

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 11, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 96–26660 Filed 10–16–96; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions for the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 18, 1996.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 11, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11745–N	Public Service Electric & Gas Co., Hancocks Bridge, NJ.	49 CFR 173.427(b)(1)	To authorize the transportation in commerce of steam generators containing Class 7 material in alternative packaging. (Mode 3.)
11746–N	FMC Corp., Philadelphia, PA.	49 CFR 174.67(j)	To authorize rail cars to remain connected during unloading of Division 2.3 material without the physical presence of an unloader. (Mode 2.)
11747–N	Monsanto Co., St. Louis, MO.	49 CFR 173.31	To authorize an alternative testing method for tank car structural recertification. (Mode 2.)
11748–N	Frank W. Hake Associates, Memphis, TN.	49 CFR 173.403, 173.427(b)(1).	To authorize the transportation in commerce of steam generators from pressurized water nuclear power plants without the use of overpack. (Modes 1, 2, 3.)
11749–N	Union Tank Car Co., East Chicago, IN.	49 CFR 180.509	To authorize an alternative testing method for specification tank cars for use in transporting various hazardous materials as presently authorized. (Mode 2.)
11750–N	Department of Energy, Albuquerque, NM.	49 CFR 173.24, 173.24, 173.301, 173.304, 178.3.	To authorize the transportation in commerce of non-DOT specification pressure vessels for use in transporting a Division 2.2 material. (Modes 1, 2.)
11751–N	Delta Resigns & Refractories, Detroit, MI.	49 CFR 173.200	To authorize the transportation in commerce of solvent coating solutions, Class 3, in UN Specification 1A2/Y1.4 openhead steel drums not to exceed 55 gallons. (Modes 1, 2.)
11752–N	Swim Chem, Sacramento, CA.	49 CFR 172.504	To authorize the transportation in commerce of small quantities of chlorine for residential swimming pool maintenance to be transported with alternative placarding. (Mode 1.)
11754–N	National Aeronautics & Space Administration, Washington, DC.	49 CFR 173.304(a)(2)	To authorize the transportation in commerce of a specially designed space device which contains compressed and liquefied gases, Division 2.1 and 2.2 in non-DOT specification containers. (Mode 1.)
11758–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 178.345–10(e)	To authorize the transportation of Division 6.1 material in MC–312 cargo tanks equipped with 1.5 inch Crosby JQ relief valves. (Mode 1.)
11759–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 179.15(a)	To authorize the transportation in commerce of 112S400W and 112S500W tanks cars equipped with 1.5 inch Crosby JQ relief valves for use in transporting Division 6.1 material. (Mode 2.)
11761–N	Vulcan Chemicals, Birmingham, AL.	49 CFR 173.31(d)(1)(vi)	To authorize the transportation in commerce of Class 8 material in rail cars equipped with 165 psig and baffles with alternative rupture disc inspection procedure. (Mode 2.)
11762–N	Owens Fabricators, Inc., Baton Rouge, LA.	49 CFR 178.245–1(a)	To authorize the manufacture, mark and sale of DOT-Specification 51 portable tanks constructed in accordance with Part UHT of the ASME Code that are not postweld heat treated for the transport of certain Class 2 material, heat treated. (Modes 1, 2, 3.)
11765–N	Laidlaw Environmental Services Inc., Columbia, SC.	49 CFR 173.241(d)(2)(i)	To authorize the transportation in commerce of Class 9 liquid hazardous materials in inner plastic and metal containers overpacked in 1G fiberboard boxes not to exceed one gallon capacity. (Mode 1.)
11766–N	E.I. Dupont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.32b(b)	To authorize an alternative testing interval for IMO Type 1 ISO portable tanks used exclusively for hydrogen peroxide service. (Modes 1, 2, 3.)
11767–N	Ausimont USA, Inc., Thorofare, NJ.	49 CFR 173.315(a)	To authorize the transportation in commerce of mixture of compressed gas in DOT 51/IMO 5 ISO containers with a minimum pressure of 400 psi. (Mode 1.)
11768–N	Flotec Inc., Indianapolis, IN.	49 CFR 173.302(a)(5)(1)	To authorize the transportation in commerce of oxygen, Division 2.2, in aluminum cylinders equipped with specially designed aluminum valves. (Mode 1.)
11769–N	Great Western Chemical Co., Portland, OR.	49 CFR 177.834(h)	To authorize the unloading of various Class 8 material from truck-mounted intermediate bulk containers. (Mode 1.)
11770–N	Gas Cylinder Technologies Inc., Tecumseh, ON.	49 CFR 173.301, 173.302, 173.304.	To authorize the transportation in commerce of non-DOT specification cylinders comparable DOT 3E for use in transporting liquified and non-liquified compressed gases, Division 2.1 and 2.2. (Modes 1, 2.)
11771–N	Conoco Inc., Billings, MT	49 CFR 173.31, 174.67	To authorize an alternative inspection criteria of rail cars used in transporting Class 2 and 3 material. (Mode 2.)
11772–N	Klespie Tank & Petroleum Equipment, Morris, MN.	49 CFR 178.337–13(d)	To authorize alternative pads to be welded to shells attached to components of MC–331 cargo tanks used in transporting liquid petroleum and anhydrous ammonia. (Mode 1.)
11773–N	West Coast Air Charter, Ontario, CA.	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize the transportation of Class 1 explosives presently forbidden or in quantities greater than those authorized for shipment by air. (Mode 4.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11774–N	Safety Disposal System, Inc., Opa Locka, FL.	49 CFR 171.8, 172.101, Col 8c, 173.197.	To authorize the transportation in commerce of a specially designed outer packaging equipped with liner for use in transporting regulated medical waste, Division 6.2. (Mode 1.)

[FR Doc. 96–26661 Filed 10–16–96; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board

[STB Finance Docket No. 33125]

Connecticut Central Railroad Company, Inc.—Modified Rail Certificate

On September 13, 1996, Connecticut Central Railroad Company, Inc. (CCCL), a class III shortline railroad, filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C—*Modified Certificate of Public Convenience and Necessity* to operate approximately 7.49 miles of abandoned segments of rail line (the Wethersfield Secondary Track) owned by the Connecticut Department of Transportation (C–DOT).[1] The segments are as follows: (1) between milepost 2.6 and milepost 3.0 at Hartford, CT; (2) between milepost 7.0 at Wethersfield, CT, and milepost 9.8 near Rocky Hill, CT; and (3) between milepost 9.8 and milepost 14.09 at Cromwell, CT.

The 0.4-mile segment between milepost 2.6 and milepost 3.0 was abandoned by Consolidated Rail Corporation (Conrail) in 1987. *Conrail Abandonment of the Wethersfield Industrial Track in Hartford County, CT,* Docket No. AB–167 (Sub-No. 992N) (ICC served Mar. 6, 1987). C–DOT acquired this segment on May 5, 1987.

The segment between milepost 7.0 and milepost 9.8 (2.8 miles) was formerly owned by the New York, New Haven & Hartford Railroad, and then the Penn Central Transportation Company. The segment was not designated for transfer to Conrail, but was available for subsidy under section 304 of the Regional Rail Reorganization Act of 1973 (3R Act). *USRA-Final System Plan-July 1975—Vol. II,* page 122. C–DOT acquired this segment on October 28, 1981.

The segment between milepost 9.8 and milepost 14.09 (4.29 miles) was acquired by C–DOT on May 4, 1983.[2]

Pursuant to a first supplemental agreement dated March 28, 1996, between C–DOT and CCCL,[3] operations were scheduled to commence no sooner than September 16, 1996, and scheduled to terminate on May 17, 2017.

The rail segments qualify for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

No subsidy is involved. There may be preconditions for shippers to meet in order to receive rail service. CCCL indicates that in order for potential shippers to receive service, they may be required to enter into a contractual agreement with it, and may be subject to a special train charge as set forth in CCCL's tariff.

The segment of line between milepost 2.6 and milepost 3.0 will connect with Conrail at Hartford. For the segments between milepost 7.0 and milepost 14.09, CCCL currently maintains interline connections with the Providence and Worcester Railroad Company at Middlefield, CT, and with Conrail at Cedar Hill Yard in New Haven, CT.

This notice must be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F St., NW., Washington, DC 20001; and on the American Short Line Railroad Association: American Short Line Railroad Association, 1120 G St., NW., Suite 520, Washington, DC 20005.

Decided: October 10, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–26603 Filed 10–16–96; 8:45 am]

BILLING CODE 4915–00–P

[1] By correspondence received October 1 and October 3, 1996, a representative of C–DOT indicates that the involved segments were acquired by C–DOT in separate transactions utilizing state funds and Federal LRSA funds.

[2] The record indicates that this segment was already out of service and abandoned at the time of the USRA's review of lines to be included in the Conrail Final System Plan. Also, the 1973 edition of the Rand McNally Handy Railroad Atlas shows no track in existence at that time between Rocky Hill and Cromwell.

[3] The original notice of lease/operating agreement, dated June 24, 1987, governs CCCL's operations over other rail lines owned by C–DOT.

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12–52]

Approval of Privacy Act Documents; authority delegation

Dated: October 8, 1996.

1. *Delegation.* By virtue of the authority vested in the Assistant Secretary (Management) and Chief Financial Officer by Treasury Order (TO) 101–05, I hereby delegate to the Deputy Assistant Secretary (Administration) the authority to approve, on behalf of the Department, subject to Treasury Directive (TD) 28–01, the notices, determinations and regulations required to be published by the Privacy Act of 1974, as amended. This includes the authority to ratify, where necessary, any such notice or regulation previously issued.

2. *Redelegation.* The authority delegated in paragraph 1. may not be redelegated. During the absence of the Deputy Assistant Secretary (Administration), notices, determinations and regulations required shall be approved by the Assistant Secretary (Management) and Chief Financial Officer.

3. *Authority.* TO 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegations of Certain Authority, and Order of Succession in the Department of the Treasury.''

4. *References.*

a. TD 28–01, ''Preparation and Review of Regulations.''

b. TD 25–04, ''The Privacy Act of 1974, As Amended.''

c. TD 25–03, ''Filing Documents for Publication with the Office of the Federal Register.''

5. *Expiration Date.* This Directive expires three years from October 8, 1996 unless superseded or cancelled prior to that date.

6. *Office of Primary Interest.* Disclosure Services, Administrative Operations Division, Office of the Deputy Assistant Secretary (Administration), Office of the Assistant Secretary (Management) and Chief Financial Officer.

George Muñoz,

Assistant Secretary (Management) and Chief Financial Officer.

[FR Doc. 96–26567 Filed 10–16–96; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INFORMATION AGENCY

Freedom Support Act Undergraduate Program

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Academic Programs, Academic Exchanges Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to recruit, select, place, monitor, evaluate, and provide follow-on activities for 150–175 undergraduate students from Armenia, Azerbaijan,* Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan in the fields of agriculture, business, computer science, criminal justice studies, economics, education, environmental management, EFL/TEFL, journalism and mass communication, library and information science, political science, public health, and sociology. Organizations applying must be able to recruit students via open, merit-based competition throughout all the New Independent States, as listed above, and should be able to place the students at diverse institutions of higher education in the United States, including public and private universities, colleges, and community colleges. Proposals for programs involving fewer than the 12 countries listed, or limited to university-to-university exchange will not be accepted. This program is subject to the availability of funds.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

The funding authority for the Freedom Support Act Undergraduate Program cited above is provided through the FREEDOM Support Act incorporated into the Foreign Relations Act of 1992–1993.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number *E/AEE–97–03*.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Tuesday, November 26, 1996. Faxed documents will not be accepted, nor will documents postmarked November 26, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

Grant and Program Duration

Grant awards are anticipated to begin on or about January 15, 1997 and terminate on or about August 31, 1998. Student programs are based on the ''junior year abroad'' model. It is expected that students will arrive in the U.S. in August for pre-academic programs, spend the full 1997–1998 academic year in program, and hold an internship during the summer months before returning home. Participants must return to their home country immediately following the completion of the USIA-sponsored program. No extensions or transfers for additional study, academic training, or new programs will be allowed.

FOR FURTHER INFORMATION, CONTACT: The European Programs Branch, Academic Exchanges Division, E/AEE, Room 246, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: 202/205–0525, fax: 202/260–7985, e-mail: treed@usia.gov to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading ''International Exchanges/Training,'' select ''Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before downloading.

Please specify USIA Senior Program Manager Mr. Ted Kniker on all inquiries and correspondence. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and nine (9) copies of the application should be sent to: U.S. Information Agency, Ref.: *E/AEE–97–03*, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

* Please note: Programs with Azerbaijan are subject to restrictions of Section 907 of the FREEDOM Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation, and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan or any of its instrumentalities will have no control in the actual selection of participants.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

The Freedom Support Act Undergraduate Program provides full scholarships for one year of non-degree, undergraduate study in the United States at professionally accredited institutions in the fields of agriculture, business, computer science, criminal justice studies, economics, education, environmental management, EFL/TEFL, journalism and mass communication, library and information science, political science, public health, and sociology. The purpose of the program is to support the economic and democratic development of the New Independent States of the former Soviet Union by exposing students to key transition fields and enhancing their education with a practical training component. Students will have a pre-academic orientation program, full academic course load beginning in the fall, and as possible, an internship in a related area in the summer following their academic year. It is expected that students will return home to complete degrees at their home institution. Students must receive academic credit for their experience in the U.S.

Funding for undergraduate programs has been steadily declining over the last two years. In order to ensure that students from the NIS have an opportunity to study in the United States, USIA's goal is to keep the number of participants as high as possible and to keep costs as low as possible. Therefore, USIA encourages proposals that demonstrate innovative ways to maintain a high quality, high volume program at the lowest possible costs.

Guidelines

Applicant organizations must demonstrate the ability to administer all aspects of the Freedom Support Act Undergraduate Program—advertisement, recruitment, selection, placement, orientation, Fellow monitoring and support, financial management, evaluation, follow-on activities, and alumni tracking and programming. Applicant organizations should demonstrate the ability to recruit and select a diverse pool of candidates from various geographic regions within the NIS through an open, merit-based competition. The program does remain flexible so that recruitment can target specific institutions deemed by the USIA and the United States Information Service to be of critical importance. Additionally, the applicant organization(s) will be asked to assist in the recruitment and selection of diverse host institutions throughout the U.S. where students may be clustered in groups of 10–20 for their academic programs. Placement will remain flexible so that universities that accept fewer students, but have low costs, or high cost-sharing, can participate in the program. The successful applicant organization(s) will act as the principal liaison with the host institutions.

Applicant organizations should demonstrate the ability to work with private sector organizations in the United States and NIS to facilitate Fellows' practical training and post-program re-entry. Further details on specific program responsibilities and goals can be found in the Project Objectives, Goals, and Implementation (POGI) Statement which is part of the formal Solicitation Package available from USIA.

Programs must comply with J–1 visa regulations.

Awards

USIA anticipates awarding one to two grants for this program. Should an applicant organization prefer to work with other organization's in the implementation of this program, USIA prefers that a subcontract arrangement be developed. USIA will entertain separately submitted proposals for joint program management, but the proposals must demonstrate a value-added relationship and must clearly delineate responsibilities so as not to duplicate efforts.

Proposed Budget

The total budget for the Freedom Support Act Undergraduate Program is $2,800,000. Each applicant organization must submit a comprehensive line item budget based upon the specific guidance in the Solicitation Package. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Organizations whose proposals include an administrative budget that is less than 20% of the grant amount requested from USIA will receive preference. Please note that indirect rates are considered part of the administrative costs and should be kept to a minimum or cost-shared as is possible. Detailed guidance on budget preparation is included in the POGI Statement. Please refer to the complete Solicitation Package for complete budget guidelines and formatting instructions.

Please note that the ability of an organization to document and provide cost-sharing will be a major factor in determining the final grant award(s). This includes the organizations' ability to leverage costs from universities, colleges, community colleges, private sector organizations, and other sources. USIA will also look to applicant organizations to propose additional ways to keep costs to a minimum. A low unit cost will also be a decisive factor in determining funding.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and USIS posts overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to

the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea: Proposals should exhibit originality, substance, precision, innovation, and relevance to Agency mission.

2. Program Objectives and Planning: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

5. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

7. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

10. Value to U.S.-Partner Country Relations: Proposed programs should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: October 9, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–26641 Filed 10–16–96; 8:45 am]

BILLING CODE 8230–01–M

Exchanges and Training Program With Russia, Ukraine and Uzbekistan

ACTION: Amendment—Request for Proposals.

This is an amendment to the request for proposals (RFP) published on October 10, 1996, concerning exchange and training programs for Russia, Ukraine and Uzbekistan (Announcement Number E/PN–97–10). The second sentence under REVIEW CRITERIA, 3. Cost Effectiveness, reads ''While this announcement does not proscribe a rigid ratio of administrative to program costs, in general, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from USIA.'' That sentence should read as follows: ''While this announcement does not proscribe a rigid ratio of administrative to program costs, in general, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from USIA.''

Notification

Awards made will be subject to periodic reporting and evaluation requirements.

Dated: October 9, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–26378 Filed 10–16–96; 8:45 am]

BILLING CODE 8230–01–M

Summer Institutes for the Study of the United States

ACTION: Notice—Request for Proposals (RFP).

SUMMARY: The Branch for the Study of the U.S. of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for three (3) assistance awards. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop and implement one of the following three six-week post-graduate level programs designed for multinational groups of 18 experienced foreign university educators:

1. Summer Institute on the U.S. Political System
1. Summer Institute on the U.S. Economy
1. Summer Institute on U.S. Society

The Programs are intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to improve courses and teaching about the U.S. abroad. Participants will have had few prior opportunities to formally study or visit the U.S., and most will be coming from institutions that are just beginning to introduce the study of the U.S. into the curriculum. Tentative program dates are June 28 to August 8, 1997.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in the institute subject field, and that can demonstrate expertise in conducting post-graduate programs for foreign educators. *Applicant institutions must have a minimum of four years experience in conducting international exchange programs.* The project director or one of the key program staff responsible for the academic program must have an advanced degree in a discipline directly related to the subject field of the institute. Staff escorts traveling under the USIA cooperative agreement support must be U.S. citizens

with demonstrated qualifications for this service.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND REFERENCE NUMBER: All communications with USIA concerning this announcement should refer to the following titles and reference numbers:

1. Summer Institute on the U.S. Political System (E/AAS–97–03)

2. Summer Institute on the U.S. Economy (E/AAS–97–04)

3. Summer Institute on U.S. Society (E/AAS–97–05)

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington D.C. time on Friday, December 20, 1996. Faxed documents will not be accepted, nor will documents postmarked December 20, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals (including specific information on budget preparation), applicants should contact: U.S. Information Agency, Office of Academic Programs, Branch for the Study of the United States, E/AAS—Room 252, 301 4th Street, S.W., Washington, D.C. 20547, Attention: William Bate, Telephone number: (202) 619–4557, Fax number: (202) 619–6790, Internet address: wbate@usia.gov.

Please specify USIA Officer William Bate on all inquiries and correspondence. Interested applicants should read the complete Federal Register announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading ''International Exchanges/Training,'' select ''Request for Proposals (RFPs).''

Please read ''About the following RFPs'' before downloading.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Information Agency, Ref.: (insert appropriate reference number from above, e.g., E/AAS–97–xx), Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants should also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity and broad range of responsible views present in American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview and Objectives

The Summer Institutes for the Study of the United States are intended to provide foreign university faculty with opportunities to deepen their understanding of the United States—its society, institutions, culture and values, past and present—in order to improve the quality of courses and teaching about the U.S. abroad.

The institute should be designed as an intensive, academically stimulating program that presents a multidimensional view of the United States through an integrated series of lectures, readings, discussions, research and independent study opportunities, faculty mentoring, and site visits.

Programs should be six weeks in length, including a residency segment at a U.S. college or university campus of at least four weeks in length, and a study tour segment of up to two weeks in length, including visits to one or more regions of the U.S.

Program Description

Program 1—Summer Institute on the U.S. Political System (E/AAS–97–03)

The purpose of this Institute is to introduce participants to the American political system through an examination of the history of American political thought, the American Constitutional structure, and the principal institutions and processes of American government at all levels.

Program 2—Summer Institute on the U.S. Economy (E/AAS–97–04)

This Institute is intended for foreign economists who are teaching at universities in countries undergoing rapid economic change. Its purpose is to acquaint participants with the basic structure, organization and institutions of the U.S. economy and how that economy functions within the context of a democratic political order and a pluralistic society.

Program 3—Summer Institute on U.S. Society (E/AAS 97–05)

This Institute seeks to provide visiting scholars with an opportunity to deepen their knowledge of U.S. society and culture through an in-depth examination of some of the major issues and debates in contemporary American society. Such an Institute will necessarily be multi-disciplinary in its approach, illuminating and integrating the historical, political, and economic, as well as the social, dimensions of the issues in question.

Program Dates: Tentative program dates are June 28 to August 8, 1997. Based on these dates, participants would be booked to arrive in the U.S. on or about June 27, and depart on August 9, 1997. USIA is willing to consider adjustment of these program dates, based on the needs of the host institution. However, the institute must be 42 program days in length, and should take place sometime between June 21 and August 30, 1997.

Participants

The program should be designed for a total of 18 highly-motivated and experienced foreign university faculty who are seeking ways to include aspects of American civilization in their teaching and professional work, but who will have had relatively few opportunities to pursue formal study of the United States. Many will come from countries where access to information, books or courses on the U.S. is relatively limited. In most cases, participants will not have had any significant U.S. travel or study experience. They will be drawn from all regions of the world and will be fluent in English.

Participants will be nominated by U.S. Information Service posts abroad, and selected by the staff of USIA's Branch of the Study of the United States in Washington, D.C. USIA will cover all international travel costs directly.

Guidelines

The conception, structure and content of the institute program is entirely the responsibility of the organizers. However, given the multiple possibilities for the successful design of such a program, organizers are expected to submit proposals that articulate in concrete detail how they intend to organize and implement the institute.

Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Proposed Budget

Unless special circumstances warrant, based on a group of 18 participants, the total USIA-funded budget (program and administrative) should not exceed $162,000, and USIA-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $48,500. Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Any grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicant proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program.

The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete budget guidelines and formatting instructions for the institute program.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, a well as the USIA Geographic Area Offices. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. Overall Quality: Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject disciplines of each institute.

2. Program Planning: Proposals should demonstrate careful planning. The organization and structure of the Institute should be clearly delineated and be fully responsive to all program objectives. The travel component should be an integral and substantive part of the program, reinforcing and complementing its academic segment.

3. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conducive to a collegial atmosphere.

4. Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience: The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal USIA procedures.

Dated: October 10, 1996.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–26642 Filed 10–16–96; 8:45 am]

BILLING CODE 8230–01–M

Summer Institute on the History of the United States: Religion in America

ACTION: Notice—Request for Proposals (RFP).

SUMMARY: The U.S. Information Agency's Branch for the Study of the United States announces an open competition for an assistance award program entitled: ''Summer Institute on the History of the United States: Religion in America.'' Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop and implement a six-week post-graduate level program designed for a multinational group of 18 experienced foreign university educators. The program is intended to provide participants with a deeper understanding of U.S. history with special reference to the role that religion and religious institutions have played in the development of American civilization. Tentative program dates are June 28 to August 8, 1997.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in U.S. history, comparative religion, and/or American studies and related subdisciplines, and that can demonstrate expertise in conducting post-graduate programs for foreign educators. *Applicant institutions must have a minimum of four years experience in conducting international exchange programs.* The project director or one of the key program staff responsible for the academic program must have an advanced degree in history, religion, American studies, or a related discipline. Staff escorts traveling under the USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AAS—97–02.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington D.C. time on Friday, December 20, 1996. Faxed documents will not be accepted, nor will documents postmarked December 20, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals (including specific information on budget preparation), applicants should contact: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States, E/AAS—Room 252, 301 4th Street, S.W., Washington, D.C. 20547, Attention: Richard Taylor, Telephone number: (202) 619–4557, Fax number: (202) 619–6790, Internet address: rtaylor@usia.gov.

Please specify USIA Program Officer Richard Taylor on all inquiries and correspondence. Interested applicants should read the complete Federal Register announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading ''International Exchange/Training,'' select ''Request for Proposals (RFPs).''

Please read ''About the following RFPs'' before downloading.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AAS–97–02, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants should also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line strength of 65 characters.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity and broad range of responsible views present in American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview and Objectives

''The Summer Institute on the History of the United States: Religion in America'' is intended to provide foreign university teachers with an opportunity to increase their understanding of U.S. civilization through an in-depth examination of the role that religion and religious institutions have played throughout American history. The program should focus on the impact of religious thought and practice on the development of U.S. society and institutions, and in turn the impact that those institutions—political, social, and economic—have had on the development and status of religion in the U.S. The program's ultimate purpose is to improve the quality of teaching and curricula about the United States at universities abroad.

The Institute should be designed as an intensive, academically stimulating program that presents a multi-dimensional view of the United States through an integrated series of lectures, readings, interactive discussions, research and independent study opportunities, faculty mentoring and site visits.

The program should be six weeks in length, including an academic residency segment (at least four weeks in length) at a U.S. college or university campus, and an integrated study tour segment (not to exceed two weeks in length) which complements the academic program and includes visits to one or two additional regions of the U.S.

Program Dates

Tentative program dates are June 28 to August 8, 1997. Based on these dates,

participants would be booked to arrive in the U.S. on or about June 27, and depart on August 9, 1997. USIA is willing to consider adjustment of these programs dates, based on the needs of the host institution. However, the institute must be 42 program days in length, and should take place sometime between June 21 and August 30, 1997.

Participants

The program should be designed for a total of 18 highly-motivated and experienced foreign university faculty who are interested in using U.S. history, and an examination of American religion in particular, as a means to improve teaching and increase understanding of the United States at their home institutions. Participants can be expected to come from educational institutions where the study of the U.S. is relatively well-developed. Thus, while they will not be expected to have in-depth knowledge of the American religious experience, most will have had substantial experience in teaching about the United States. Many will have had sustained professional contact with American scholars and American scholarship; some may have had substantial prior experience studying in the U.S. Participants will be drawn from all regions of the world and will be fluent in English.

Participants will be nominated by U.S. Information Service posts abroad, and selected by the staff of USIA's Branch of the Study of the United States in Washington, D.C. USIA will cover all international travel costs directly.

Guidelines

The conception, structure and content of the institute program is entirely the responsibility of the organizers. However, given the multiple possibilities for the successful design of such a program, organizers are expected to submit proposals that articulate in concrete detail how they intend to organize and implement the institute.

Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Proposed Budget

Unless special circumstances warrant, based on a group of 18 participants, the total USIA-funded budget (program and administrative) should not exceed $162,000, and USIA-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $48,500. Justification for any costs above these amounts must be clearly indicated in the proposal submission. Any grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicant proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program.

The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete budget guidelines and formatting instructions for the institute program.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Geographic Area Offices. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. Overall quality: Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the larger discipline of American history, with attention given to the theme of American religious history.

2. Program planning: Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. The travel component should be an integral and substantive part of the program, reinforcing and complementing its academic segment.

3. Institutional capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conducive to a collegial atmosphere.

4. Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience: The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposals should maximize costsharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will

be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal USIA procedures.

Dated: October 9, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–26640 Filed 10–16–96; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 61, No. 202
Thursday, October 17, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-200-010]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 96–26003 appearing on page 53215 in the issue of Thursday, October 10, 1996, in the second column, at the bottom of the page, the Docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR-3966-F-01]
RIN 2502-AG58

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Streamlining of the FHA Single Family Housing, and Multifamily Housing and Health Care Facility Mortgage Insurance Programs Regulations

Correction

In rule document 96–7488 beginning on page 14396 in the issue of Monday, April 1, 1996, make the following corrections:

§ 200.1302 [Correctly Added]

On page 14404, in the third column, amendatory instruction 7 inadvertently revised § 200.1301. Amendatory instruction 7 and the heading for § 200.1301 should read as follows:

7. In subpart W, a new § 200.1302 is added to read as follows:

§ 200.1302 Additional Expiring Programs—Savings Clause.

* * * * *

BILLING CODE 1505–01–D

federal register

Thursday
October 17, 1996

Part II

Department of Agriculture

Food and Consumer Service

7 CFR Parts 271, et al.

Food Stamp Program: Leland Childhood Hunger Relief Act Certification Provisions; Child Support Deduction; Educational and Training Assistance Treatment; 1994 Improvements Act Reservations Provision Monthly Reporting; and Program Rules Simplification; Final Rules

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272 and 273

[Amendment No. 375]

RIN 0584–AB76

Food Stamp Program: Certification Provisions of the Mickey Leland Childhood Hunger Relief Act

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends Food Stamp Program regulations to implement nine provisions of the Mickey Leland Childhood Hunger Relief Act, finalizing a proposed rule published in the Federal Register on August 30, 1994. This rule will: (1) simplify the household definition; (2) establish eligibility for children who live with their food stamp eligible parents in a drug or alcohol rehabilitation center; (3) exclude from resources the value of vehicles used to transport fuel or water; (4) increase the fair market value exclusion of vehicles for determining a household's resource limit; (5) exclude certain General Assistance (GA) vendor payments; (6) exclude the earnings of elementary and secondary students under age 22 who live with their parents; (7) increase the maximum amount of the dependent care deduction; (8) eliminate the current federally-imposed limit and (9) require State agencies to establish a Statewide limit on the dependent care reimbursement paid to participants in the Food Stamp Employment and Training Program (E&T); and require proration of food stamp benefits only after a break of more than one month in certification.

DATES: This rule is effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, 3101 Park Center Drive, Alexandria, VA 22302 or by telephone at (703) 305–2520.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12372

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

Executive Order 12778

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

Regulatory Flexibility Act

The Department has also reviewed this final rule in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The rule will affect food stamp applicants and recipients and the State and local agencies that administer the Program. Eligibility criteria will be simplified and some currently participating households will realize an increase in Program benefits.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The information collection requirements associated with application, certification and ongoing eligiblity of food stamp households is approved under OMB No. 0584–0064. This rule affects the determination of eligibility and benefit levels only; it does not affect the current information collection requirements for making such determination.

Regulatory Impact Analysis

Need for Action

This action is required as a result of Title XIII, Chapter 3, Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, the Mickey Leland Childhood Hunger Relief Act (Leland Act), amendments to the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032. The Leland Act amendments: (1) simplify the household definition; (2) establish eligibility for children who live with their food stamp eligible parents in a drug or alcohol rehabilitation center; (3) exclude from resources the value of vehicles used to transport fuel or water; (4) increase the fair market value exclusion of vehicles for determining a household's resource limit; (5) exclude certain General Assistance vendor payments; (6) exclude the earnings of elementary and secondary school students under age 22 who live with their parents; (7) increase the maximum amount of the dependent care deduction; (8) eliminate the current federally-imposed limit and require State agencies to establish a Statewide limit on the dependent care reimbursement paid to participants in the Food Stamp Employment and Training Program; and (9) require proration of benefits only in the initial month of certification.

Benefits

This action will increase the number of potentially eligible food stamp recipients and will increase the benefit level of certain households that are affected by these provisions.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $7 million in Fiscal Year 1994; $107 million in Fiscal Year 1995; $132 million in Fiscal Year 1996; $187 million in Fiscal Year 1997; and $207 million in Fiscal Year 1998.

Background

On August 30, 1994, the Department published a proposed rule at 59 FR 44866 to implement amendments to the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032, (Food Stamp Act) made by the Mickey Leland Childhood Hunger Relief Act. Title XIII, Chapter 3,

Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, (Leland Act).

Comments were solicited on the provisions of the proposed rulemaking through October 31, 1994. The Department received 26 comment letters from State and local welfare agencies and public interest groups. All comments received were reviewed and considered, and those which raised relevant issues or questions are addressed below by subject. Comments which were unclear or not pertinent to this rulemaking are not addressed in this preamble. For a full understanding of the provisions of this final rule, the reader should refer to the preamble of the proposed rule.

By the time this rule is published, subsequent legislation will have modified some of its provisions. The Department will be amending these regulations to reflect those legislative changes.

Simplifying the Household Definition for Households With Children and Others

Section 13931 of the Leland Act amended section 3(i) of the Food Stamp Act to simplify the household definition provisions and to support families that live together to share housing expenses but maintain individual households. With certain enumerated exceptions, the simplified household definition allows persons who live together and purchase food and prepare meals separately to participate in the Program as separate food stamp households. Those presumed to be groups of individuals who customarily purchase and prepare meals together even if they do not do so are: (1) spouses who live together; (2) parents and their children 21 years of age or younger (who are not themselves parents living with their children or married and living with their spouses); and (3) children (excluding foster children) under 18 years of age who live with and are under the parental control of a person other than their parent together with the person exercising parental control. The Leland Act left intact the separate household status of individuals (and their spouses) who live with others, are 60 years of age or older, and are unable to purchase food and prepare meals due to a disability or disabling infirmity, as long as the other household members' income (excluding that of the spouse) does not exceed 165% of the poverty line.

The Department proposed to amend 7 CFR 273.1(a) to mirror section 13931 of the Leland Act with one addition. The Leland provision did not address whether a child under 18 who is living with a non-parent adult can be a separate household from that adult when the child is married and living with his or her spouse or living with his or her own child. To provide the same treatment for a child living with a non-parent adult that is provided for a child living with a natural, adoptive, or stepparent, the Department proposed changing the definition of parental control to specify that children who live with their own children or who are married and live with their spouses are not considered to be under parental control for purposes of the section. Several commenters, including State welfare agencies and public interest groups, strongly supported the proposal because it simplifies the household determination by making the purchase and preparation of food the basis for membership in a household with only a few simple exceptions.

The Department also proposed two conforming amendments to implement section 13931 of the Leland Act. As described in greater detail above, the Leland Act preserved the separate household status permitted for elderly individuals who are so disabled that they cannot purchase and prepare food for themselves. The Department proposed amending the provision that implements this exception, 7 CFR 273.1(a)(2)(ii), to update its references to the new portions of 7 CFR 273.1(a)(2)(i) regarding spouses and children. The Department proposed a second conforming amendment to remove the requirement of 7 CFR 273.10(f)(2) that mandates certification periods of up to six months for households meeting the parent/child or sibling provisions of 7 CFR 273.1(a)(2)(i) (C) and (D) because the Leland Act amended the parent/child provisions and removed the sibling provisions.

No adverse comments were received on the amendment removing the six-month certification requirement for households consisting of an individual and his/her minor children living with the individual's parent or sibling, and so it will not be changed in this final rulemaking. The other proposed conforming amendment is discussed below.

Two State welfare agencies requested clarification on how section 13931 of the Leland Act and the Department's proposed rule changed 7 CFR 273.1(a)(2)(ii), which allows individuals who are elderly and so disabled that they cannot purchase and prepare food for themselves to be separate households (in certain circumstances) from the others with whom they live. In the proposed rule, the Department updated the references in the elderly and disabled provision to correspond to the proposed rule's household definition. Under that proposal, an elderly and disabled person would be combined into one household with his or her spouse, his or her natural, adopted or stepchildren under age 22, and those children under 18 over whom the elderly and disabled individual exercised parental control. This makes the provision needlessly complex. This special rule for elderly and disabled people was created to discourage these individuals from being institutionalized, and to encourage people to take care of them by allowing them to be separate food stamp households. To continue to subject this exception to the other household provisions regarding children is also a departure from the legislation, which only requires that the elderly and disabled individual be included in the same food stamp household as his or her spouse. For these reasons, the Department is amending 7 CFR 273.1(a)(2)(ii) to follow the statutory language more directly.

One commenter asked whether there was a minimum age for children who can, by default, have their own household under this elderly and disabled exception. Section 5(i) of the Food Stamp Act, as amended by the Leland Act, provides that ''[n]otwithstanding the preceding sentences, [the household definition provision] an individual who lives with others, who is sixty years of age or older, and who is unable to purchase food and prepare meals because such individual suffers * * * from a disability * * * shall be considered, together with any of the others who is the spouse of such individual, an individual household, without regard to the purchase of food and preparation of meals if the income * * * of the others, excluding the spouse, does not exceed the poverty line * * * by more than 65 per centum.'' This statutory language requires that the elderly and disabled individual be combined with his or her spouse, but does not address children that may also be in the household. It would be rare for an elderly person who is so disabled that he or she cannot purchase and prepare food to be living alone in a household with a minor child. Because this circumstance is not very likely to occur and the Food Stamp Act does not address children, the Department has decided not to set an arbitrary minimum age, and instead will follow the language of the Food Stamp Act.

With respect to the proposal as a whole, one commenter thought it was confusing that the household definition establishes different ages (18 and 21) depending on the child's relationship

with the people with whom the child lives. Because these ages were statutorily mandated, the Department does not have the authority to change them. Several commenters requested that the Department continue to grant separate household status to minor children who live with an elderly or disabled parent or sibling. However, section 13931 of the Leland Act amended the household definition, eliminating the sibling provision in favor of a more simplified definition. The Department cannot override the Leland Act by restoring this provision. One commenter asked whether an individual can have a separate food stamp household the month he or she turns 22 (or 18 if the individual lives under the parental control of a non-parent), or the month after. The household composition analysis is not analogous to other age-driven provisions because it is also based on whether the individual purchases and prepares food separately from the others in the household. Separate household status is not granted automatically; an individual must meet the requirements that apply to all applicants, including the requirement to purchase and prepare food separately.

Two commenters asked whether the provisions of 7 CFR 273.1(c)(1) regarding boarders should be changed in light of the Leland Act changes and the legislative intent behind those changes. Current regulations at 7 CFR 273.1(c)(1) preclude children, even adult children, from being granted boarder status in their parents' home. According to 7 CFR 273.1(c)(5), a boarder's income and resources are excluded from the income and resources of the household providing boarder services. Allowing adult children to be boarders in their parents' homes might encourage parents to allow children to remain at home until they are self-sufficient. The commenters thought a rule change would be necessary to remove the prohibition against children being boarders in their parents' homes. However, the current boarder provision, 7 CFR 273.1(c)(1), incorporates the new household definition by reference and denies boarder status only to those ''* * * individuals or groups of individuals described in paragraph (a)(2) [of 7 CFR 273.1] * * *.'' Paragraph 273.1(a)(2) is being amended by this rule to describe children under age 22 living with their natural, adoptive, or stepparents, and children under 18 living under the parental control of a non-parent adult. Therefore, children age 22 and over are no longer prohibited by 7 CFR 273.1(c)(1) from being considered boarders in their parents' homes, and children 18 and over living with non-parent adults are not prohibited from being considered boarders in the adult's home.

The Department received many comments on its proposal to amend the definition of parental control. The current definition is contained in Food Stamp Program Policy Memo 3–93–6, dated March 26, 1993, which states that children under parental control for food stamp eligibility purposes are ''minors who are dependents—financial or otherwise—of the household as opposed to independent units.'' The proposed rule retained the ''dependents or otherwise'' clause of the old definition, and added that ''[c]hildren who are living with their children or who are married and living with their spouse are considered to be independent units and not under parental control.'' The Department proposed to change the definition so that children living with non-parent adults would be treated the same as children living with their natural, adoptive, or stepparents.

Four State welfare agencies objected to the proposal that children with children of their own should be separate households from the parents or adults with whom they live only if the children purchase and prepare food separately. One commenter also objected to this granting of separate status to children who are married and living with their spouse when they purchase and prepare food separately from the adults with whom they live. This treatment is statutorily mandated with respect to children under age 22 who live with their natural, adoptive, or stepparents. The Department's only discretion in implementing this particular provision was to extend this treatment to those children under 18 who are living with non-parent adults. Several public interest groups commended the Department's decision to extend the parent/child and spousal exceptions mandated for natural, adopted, or stepchildren under age 22 who live with their parents to children under 18 who live with non-parent adults. No comments were received that objected to treating these two groups of children (those who live with their natural, adoptive, or stepparents and those under 18 who live with a non-parent adult) the same. Therefore, the Department's proposal to amend 7 CFR 273.1(a) to define as independent those children who are either married and living with their spouses, or living with their own children, is retained in this final rulemaking.

One State welfare agency requested more time to implement the extension of the parent/child and spousal exceptions to children under 18 living with non-parent adults because it was not statutorily mandated, and so not included in the implementing instructions provided by the Department. The Department recognizes that implementing new provisions places an administrative burden on State welfare agencies, especially those with separate rulemaking procedures. Therefore, the Department is making one exception to the September 1, 1994, implementation date for the provisions of this rule. State agencies must implement the provision allowing separate household status to children under 18 who are living with their spouse or children in the home of a non-parent adult no later than 90 days after publication of this rule.

Several commenters requested guidance on what constitutes parental control with respect to a minor who is ''financially or otherwise'' dependent on other household members. Some commenters argued that the definition is vague and can result in inconsistent treatment. Although the Department recognizes that this definition may be subject to interpretation, the Department drafted this definition (in Food Stamp Program Policy Memo 3–93–6) to provide a consistent measure that would be broad enough to be compatible with State laws, which vary widely on issues of parental control. The Department is also reluctant to provide finite lists of dependencies which would be indicative of parental control. The Department feels that this determination should be left to the eligibility worker, who is in the best position to evaluate a particular child's relationship with the adults in his or her household. The Department believes that a more specific definition of parental control would limit the eligibility worker's flexibility to make these determinations. For these reasons, the Department has decided to adopt the proposed revision to 7 CFR 273.1(a)(2)(i)(B) (designated 273.1(a)(2)(i)(C) in this rule) with one minor language clarification suggested by a commenter that makes the provision easier to understand.

One commenter was concerned that the Department's definition of parental control can hurt children who leave their parents' homes because of abuse or neglect and who move in with neighbors, relatives, or parents of schoolmates. The commenter noted that defining parental control to include financial dependence often prevents these children from having their own food stamp households, and therefore makes it more difficult for families to afford to take in these children. The

commenter requested that a household's affidavit stating that a child is not under parental control be accepted to conclusively establish that child's independence. If in fact a child is under parental control according to Program rules, those facts are not changed merely because the household provides a statement otherwise. The facts of a given situation, as determined by the eligibility worker, would govern the certification of a child or children as a separate household.

The commenter's other suggestion was to expand the definition of foster children to include children who live with others outside of the formal foster care system. However, even if these children were included as foster children, they would not be entitled to separate household status because foster children are considered boarders under 7 CFR 273.1(c)(6). As boarders, these children could not have their own household, but could be included in the food stamp household of the household providing boarder services at its request. This option results in an outcome identical to the situation first presented by the commenter, in which the child cannot have his or her own household, but can be included in the household of others. Although the Department understands the difficulties these children and the families that take them in face, the Department has elected not to change the definition of parental control for the reasons discussed above.

In summary, the Department is adopting the changes to 7 CFR 273.1(a)(2)(i) as proposed, with a minor change in language. The proposed change to 7 CFR 273.1(a)(2)(ii) was revised to clarify that only the spouse of an elderly and disabled household member must be included in the household of the elderly and disabled person. The proposed change to 7 CFR 273.10(f) is adopted without change.

Eligibility of Children of Parents Participating in Drug or Alcohol Treatment Programs

Section 13932 of the Leland Act amended the Food Stamp Act to authorize Program eligibility for children living with their otherwise eligible parent(s) in a drug or alcohol treatment center. Under this provision, the children would be included in the parent's household. To implement this provision, the Department proposed to amend 7 CFR 273.1(e)(1)(ii) to extend food stamp eligibility to children of narcotic addicts or alcoholics who are residents of drug or alcohol treatment centers. Conforming language was also proposed to 7 CFR 273.1(f)(2), and to the definition of ''eligible foods'' in 7 CFR 271.2.

Two public interest groups commented on this provision, and both raised the same issue. Although the commenters generally supported the provision, both requested that State welfare agencies be given the option to allow narcotic addict or alcoholic parents and their children who live with them in the treatment center to be separate households. This issue was addressed in the preamble to the proposed rule. The Department has considered this issue again, but continues to believe that the household definition in the Food Stamp Act, as amended by the Leland Act, prohibits allowing separate household status to children under 22 living with their parents in a treatment center. Therefore, the Department is adopting with minor technical change the amendments to 7 CFR 273.1(e)(1)(ii) and 7 CFR 273.1(f)(2) contained in the proposed rule.

Vehicles Necessary To Carry Fuel or Water

Section 13924 of the Leland Act amended section 5(g)(2) of the Food Stamp Act to exclude from household resources the value of a vehicle that a household depends upon to carry fuel for heating or water for home use when such transported fuel or water is the household's primary source for fuel or water. The Department proposed to amend 7 CFR 273.8(h)(1) to add the new vehicle exclusion as paragraph (vi). The language of the Department's proposed rule mirrors the statutory language, and the Department is adopting as final the language of the provision in the proposed rulemaking. However, in response to several issues raised by commenters, the Department would like to clarify its rationale for adopting this provision.

One commenter objected to adding another vehicle exclusion to an already complicated provision, but because this provision is statutorily mandated, the Department does not have the discretion to omit this exclusion.

In this final rulemaking, the Department is continuing its commitment to providing State agencies with enough flexibility so that they can implement this rule to address their specific situations. For example, the Alaska State agency has the flexibility to determine whether a boat or other vehicle would meet the requirements of this provision because the Department has not defined the term ''vehicle.'' Several commenters commended the Department for this position, and it has not been changed in this rulemaking.

The Department wishes to clarify its position on one policy expressed in the preamble to the proposed rule in light of comments received. The Department indicated in the preamble to the proposed rule at 59 FR 44869, that access to public utilities would not preclude a household from using this exclusion as long as the household actually used the vehicle as provided in section 13924 of the Leland Act. This statement was based on the Department's view that a household may not be able to afford the fuel that is piped into the home, or may choose not to use the fuel for other reasons. The Department believed that these households should be entitled to the exclusion.

Although the Department stated in the preamble to the proposed rule that the provision could apply where the household was unable to use its utilities ''for whatever reason, such as non-payment of utility bill[s],'' the Department did not intend to indicate that this resource exclusion could be extended to cover temporary conditions. This policy was intended to address those situations in which a household was using its vehicle to transport fuel or water for sustained periods of time. This interpretation is supported by both the legislative history and the language of the statute. The Conference Report indicates that Congress intended this exclusion to apply only when households did not have fuel or water ''piped into their homes.'' (House Conference Report No. 213, 103rd Cong., 1st Session 927 (1993)). Further, the language of the statute allows a resource exclusion for ''a vehicle that a household depends on * * * when such transported fuel or water is the primary source * * * for the household * * *'' (emphasis added). This language implies something more permanent than a temporary condition like a utility being off because of non-payment of the bill. The two State welfare agencies that commented on this aspect of the vehicle exclusion did not support the provision. One agency wondered how its eligibility workers could know how long to apply the exclusion if a household told the worker it was using the vehicle because the electricity had been turned off for non- payment. Such cases would be labor intensive for the caseworker in order to ensure that the exclusion ended when utilities were restored. Both State agency commenters suggested that allowing it to apply in this situation would be error-prone and administratively difficult to implement.

This vehicle exclusion extends eligibility to households that would not otherwise be eligible because of the

excluded vehicle. Allowing the exclusion when a household has temporarily had its utilities turned off for non-payment of its utility bills also presents the incongruous situation of addressing a household's inability to pay a utility bill with temporary eligibility for food stamps.

The Department recognizes that there may be times when a household's utilities will be off for an extended period of time, or that there may be rural areas or other areas with sporadic or unreliable access to water or fuel. There may also be occasions where a household's access to drinking water is interrupted for an extended period of time such that the exclusion would be appropriate. To balance the need for administrative ease in determining entitlement to the exclusion with an appropriate response to a household's circumstances, the Department is modifying the language of the final rule to allow the vehicle exclusion if it is anticipated that the transported fuel or water will be the household's primary source of fuel or water during the certification period. This gives eligibility workers the flexibility to evaluate each situation and apply the provision with common sense and good judgment.

The legislative history of the provision indicates that Congress intended to apply the exclusion without requiring the household to meet any ''additional tests concerning the nature, capabilities, or other uses of the vehicle.'' (House Conference Report No. 213, 103rd Cong., 1st Session 927 (1993); House Report No. 111, 103rd Cong., 1st Session 33 (1993)). The Department drafted its proposed rule to reflect this statutory intent, and no adverse comments were received on this provision. However, some commenters mistakenly thought this was a verification provision. This language is intended merely to prevent a household that meets the fuel/water vehicle exclusion from having to further justify excluding the vehicle. It is very possible that a vehicle excluded under this provision would have value far in excess of the fair market value vehicle exclusion (discussed below), and this language would preclude the household from having to meet the fuel/water vehicle exclusion test first, and then having to meet a fair market value test.

In the preamble to the proposed rule, the Department requested comments on how this exclusion could be verified. By asking for these comments, the Department did not mean to indicate that it was departing in any way from its normal verification requirements and procedures. Several public interest groups urged that an applicant household's assertion that it depends on a vehicle to transport its fuel or water should conclusively establish its entitlement to the exclusion. The Department sees no reason to exempt this vehicle exclusion from the normal verification requirements by allowing self-declaration. Several commenters supported including a question in the food stamp application, or checking with someone outside the household who is familiar with the household's circumstances. With the exception of the documentation requirement contained in the proposed rule, the Department is not adopting any specific verification requirements for this exclusion. No adverse comments were received regarding the Department's requirement that no documentation be required unless the exclusion was questionable, so it is adopted as final.

No comments were received on the proposed technical amendment to the summary of the vehicle provisions at 7 CFR 273.8(h)(6). Therefore, the proposed revisions to 7 CFR 273.8(h)(1) and 7 CFR 273.8(h)(6) are adopted as final.

Vehicles Needed To Seek and Continue Employment and for Household Transportation

Current regulations at 7 CFR 273.8(h)(3), in accordance with section 5(g) of the Food Stamp Act, require that all licensed vehicles be evaluated to determine their fair market value for purposes of determining a household's resource eligibility for the Program. Section 13923 of the Leland Act amended section 5(g)(2) of the Food Stamp Act to increase the fair market value resource exclusion of vehicles by $50 on September 1, 1994, and by an additional $50 on October 1, 1995. Beginning on October 1, 1996, the fair market value resource exclusion will be adjusted annually, using a base of $5,000, to reflect changes in the Consumer Price Index (CPI).

In order to implement section 13923 of the Leland Act, the Department proposed to amend 7 CFR 273.8(h)(3) to conform to the timetable and values mandated by section 13923. The Department received three comments on this provision, each one requesting a departure from the values or timetable provided by the Leland Act. Two of the commenters suggested that the participant's equity value should be evaluated, which would provide a more realistic measure of the vehicle's value to the household. One commenter suggested increasing the exclusion directly to $4,600 without the intermediate steps. The Department has no discretion in this area. Section 13923 of the Leland Act is itself a compromise position. As indicated in the House Conference Report, the exclusion was originally going to be raised to $5,500 in 1994, and adjusted annually to the CPI thereafter. (House Conference Report No. 213, 103rd Cong., 1st Session, 927 (1993)). Given this clear legislative mandate, the Department cannot unilaterally raise the fair market value exclusion or change the Leland Act's timetable. The Department is therefore adopting the provision as proposed.

After the proposed rule was published, the Department realized that a conforming amendment was needed at 7 CFR 273.8(i)(4), involving the transfer of resources. That provision contains an example which includes the old dollar figure of $4,500 for the vehicle exclusion. Because the exclusion has changed and will become variable starting in 1996, the example in 7 CFR 273.8(i)(4) has been deleted.

General Assistance (GA) Vendor Payments

Section 13915 of the Leland Act amended section 5(k)(1)(B) of the Food Stamp Act to change the treatment of third-party payments made to recipients from GA programs. To implement this provision, the Department proposed to amend and reorganize 7 CFR 273.9(c)(1). Three commenters supported the proposed language as a significant improvement over the previous, more complex provision. One commenter supported the provision, but requested that GA vendor payments for utilities assistance also be excluded from income under the provision. Under the proposed language, 7 CFR 273.9(c)(1)(ii)(A) does exclude ''assistance provided for utility costs'' from income. Because no adverse comments were received, the Department is adopting the complete revision of 7 CFR 273.9(c)(1) contained in the proposed rulemaking.

Student Earned Income Exclusion

Section 13911 of the Leland Act amended section 5(d)(7) of the Food Stamp Act to exclude ''income earned by a child who is a member of the household, who is an elementary or secondary school student, and who is 21 years of age or younger * * *.'' Current regulations at 7 CFR 273.9(c)(7) exclude the earned income of children who are under age 18, members of the household, under the parental control of another household member, and students at least half-time. Under the current regulations, the exclusion does not apply if the student has formed a separate household. The legislative

history of section 13911 indicates that the provision was intended to assist students that are still in high school and living with their parents beyond age 18, but not to change the law regarding students who live away from home and have separate food stamp households (House Report No. 111, 103rd Cong., 1st Session 28 (1993)).

To implement this provision and address issues that had arisen under the current student earned income exclusion, the Department proposed to amend 7 CFR 273.9(c)(7) to exclude the earned income of ''a student under age 22 who attends elementary or secondary school or classes to obtain a General Equivalency Diploma at least half-time and lives with a natural, adoptive or stepparent, is under the control of a household member other than a parent, or is certified in a separate food stamp household but lives with a natural, adoptive or stepparent.'' The proposed rule included some provisions not directly mandated by the statutory language, but that were either carried over from the current provision or included in the proposed rule to implement the legislative intent of the provision. Issues raised in the comments to the proposed rulemaking are addressed below.

Living Arrangement

Thirteen commenters strongly opposed limiting the student earnings exclusion to students living with their parents or under the parental control of another household member. There were no comments that supported the limitation. Commenters argued that a student's living arrangements should have no bearing on the student's entitlement to the exclusion. Several commenters argued that the First Circuit's decision in *Dion* v. *Commissioner, Maine Department of Human Services,* 933 F.2d 13 (1st Cir. 1991), discussed in the preamble to the proposed rule would specifically prohibit this limitation. Several commenters argued that even if the legislative history supported the limitation, statutory construction rules would prohibit looking to it because of the clear language of the statute. Several commenters thought the limitation was inconsistent with the Department's and Congress' intent to encourage students to stay in school. Some State welfare agencies also commented that the requirement would be burdensome and error-prone.

The Department maintains its position that the language of the statute and its legislative history support limiting the exclusion to students living with their parents. It is appropriate and necessary for the Department to look to the legislative history of this provision in order to develop implementing regulations. This exclusion was passed after the First Circuit's decision in *Dion* and so the Department considered the provision's legislative history to determine whether, and to what extent, Congress intended the provision to address issues raised in that litigation. The Department disagrees with one commenter's assertion that the Supreme Court's decision in *Chevron USA* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984), would preclude looking to the legislative history to interpret this provision. Even the *Dion* court looked to the legislative history to interpret the statutory language of the pre-Leland provision. That court concluded, based on the language of the statute and its legislative history, that Congress had not intended to limit the exclusion to students living with their parents. *Dion,* 933 F.2d at 19. It is also the Department's position that its proposal does not violate the holding in *Dion.* The decision in that case was based in part on the lack of ''evidence that Congress considered the policy implications of either extending the exclusion to all student-earners or limiting it to those within their parents' household.'' (emphasis added) *Dion,* 933 F.2d at 17. Now Congress has clearly indicated its intent to limit this exclusion only to students living with their parents. (House Report No. 111, 103rd Cong., 1st Session 28 (1993)).

Contrary to some commenters' assertions, the Department believes the limitation best addresses Congressional intent. The House Report states that the provision was intended ''to encourage those students who are living with their parents to pursue their education * * *.'' (emphasis added) (House Report No. 111, 103rd Cong., 1st Session 28 (1993)). Congress clearly did not intend the exclusion to apply to all students, but created the exclusion to address situations where students' earnings could have a negative impact on the students' families. There is also no reason that this limitation will be administratively burdensome or error-prone because the information will already have been collected and analyzed for the household determination.

In order to reflect the realities of today's diverse household situations and be consistent with the amended household definition provisions of 7 CFR 273.1(a)(2)(i)(B), the Department will include students who are living under the parental control of an adult household member other than a parent. The Department continues to believe that this is a reasonable interpretation of the statutory language and intent that otherwise eligible students living with parents (or with others acting in that role) should have their earned income excluded.

The Department has therefore decided to retain the requirement in the proposed rule that students must live with a natural, adoptive, or stepparent, or be living under the parental control of a household member other than a parent, to be eligible for this exclusion.

One commenter requested more time to implement the student income exclusion because of the limitations regarding a student's living arrangements. The Department may not extend the implementation beyond the statutorily mandated date of September 1, 1994.

Status as Head of Household

The Department also received several comments arguing that the exclusion should apply regardless of the student's status as head of household. In its proposal, the Department extended the exclusion to students who are certified in separate food stamp households, but who live with their parents. Under the proposal, any (otherwise eligible) student who lives with his or her natural, adoptive or stepparent is entitled to the exclusion, regardless of that student's status in the food stamp household.

The plaintiff in *Dion,* a 17 year-old girl who was the head of her own food stamp household and who also lived with her parents, would be eligible for the exclusion under the proposal. A student who lives with someone other than his or her natural, adoptive, or stepparents, and who forms a separate food stamp household would not be eligible for the exclusion. The Department does not agree with the commenter who argued that whether a student like Ms. Dion is living with her parents or living on her own would not be relevant in this inquiry. Congress specifically stated that the new student provision was not intended to change ''current law regarding those students who live away from home and have formed a separate household.'' (emphasis added) (House Report No. 111, 103rd Cong., 1st Session 28 (1993)). Such students are currently ineligible for the income exclusion, and so Congress specifically intended for those students to remain ineligible for the exclusion.

The Department is therefore retaining the proposal's extension of the exclusion to students who have been certified in a separate food stamp household, as long as that student is

living with a natural, adoptive or step-parent.

Half-Time Attendance

Another issue raised by several commenters was whether the Department could require that students attend school at least half-time to be eligible for the exclusion. The legislative history of section 13911 of the Leland Act did not address this issue. Because of concerns that the increased scope of the exclusion (increasing the eligible age from 18 to 21) would dramatically increase its cost, the Department believed that the exclusion should be limited to students seriously pursuing a high school diploma or General Equivalency Diploma (GED).

Seven commenters strongly objected to the proposal's half-time requirement. One commenter, although recognizing the Department's desire to limit costs with a fair and simple rule, agreed with other commenters that the half-time requirement was arbitrary. Another commenter suggested that students with learning disabilities, health problems, difficult family situations, or other circumstances might not be able to attend classes half-time. Commenters also argued that restricting the exclusion to students who attended school for a specified period of time each day was contrary to Congressional intent to help students who need more time to finish school. (House Report No. 111, 103rd Cong., 1st Session 28 (1993)). Several State agencies remarked that verification would be difficult and the requirement would be error-prone.

The Department understands the concerns regarding the half-time requirement. However, the Department is reluctant to exclude the income of every student. To illustrate, although the Department is extending the exclusion to GED students, we do not believe that this exclusion should apply to a person working full-time and studying for the GED for a few hours a week on his or her own.

One commenter made a suggestion that provides some limit, but is not arbitrary. The commenter suggested that as long as a person attends school for enough time for that person's state or local school district to consider the person a ''student,'' then the exclusion should apply, regardless of the time the person spends in class. The Department has chosen to adopt this practical and reasonable approach to the problem of school attendance. This approach also resolves a separate issue raised by two commenters, who requested that home-schooled students also be eligible for the exclusion. The Department has amended 7 CFR 273.9(c)(7) to provide that as long as the otherwise eligible person is either (1) attending elementary or secondary school, or (2) attending GED or home-school classes recognized, operated, or supervised by the student's state or local school district, then the student's earned income will be excluded. The Department also believes that this approach will be less administratively burdensome and error-prone.

GED Classes

One commenter objected to the Department's decision to include students attending classes to obtain a GED among those students who are eligible for this exclusion. The commenter believed that adding GED students would make the exclusion too difficult to implement because of the half-time attendance requirement. Two commenters supported the inclusion of GED students. The Department has eliminated the half-time requirement, and believes that the new provision will not be difficult to apply to GED students. Although the Leland Act did not directly address GED students, the legislative history reflects support for those who are working to obtain a high school diploma, (House Report No. 111, 103rd Session 28 (1993)), and the Department sees no reason not to include those pursuing a diploma in a GED program recognized, supervised, or operated by the student's state or local school district. The Department believes that earning a high school diploma is a significant step towards self-sufficiency, and that extending this exclusion to include students pursuing a GED in a reputable program will encourage them to continue. Therefore, the proposed provision to allow the earned income exclusion for students attending GED classes is retained in this final rule.

Case Adjustment When Student Becomes 22

Another issue addressed in the proposal is the point at which a student's earnings must be counted when the student turns 22 during the certification period. To make the requirements for applicant and ongoing households and prospective and retrospective budgeting procedures the same, the Department proposed to add a new paragraph (E) to 7 CFR 273.10(e)(2)(i) to provide that for prospective eligibility and benefit determination, the earned income of a high school or elementary school student shall be counted beginning with the month following the month in which the student turns 22. To address retrospectively budgeted households, the Department proposed to amend 7 CFR 273.21(j)(1)(vii) to specify that the income of an elementary or secondary student shall be counted beginning with the budget month after the month in which the student turns 22. The Department's proposal did not change the current regulations regarding the continuation of the exclusion during temporary interruptions in school attendance and the proration of income when the child's share cannot be differentiated. Two commenters commended the Department's proposal as a simple and fair handling of the issue.

One commenter suggested that the income be included beginning with the certification period after the student turns 22 or graduates. Similarly, one commenter suggested that certification periods be set to correspond with these events. Although the Department encourages State agencies to set certification dates as suggested by the commenter to ease the administrative burden of making the adjustment, the Department will not complicate the provision by requiring that certification periods be so set. In addition, because the effects of the income exclusion are so sweeping, the Department believes it would be too costly to extend a student's earned income exclusion until the next recertification. The Department is therefore adopting the language of these proposals with one clarification in the context of retrospective budgeting.

The Department is clarifying 7 CFR 273.21(j)(1)(vii), which addresses retrospective eligibility and budgeting, because of a comment we received which demonstrated that our proposal was not clear. The new language specifies that the income of an elementary or secondary student shall be counted beginning with the budget month after the budget month in which the student turns 22. To illustrate: a student in a retrospective budgeting jurisdiction (which budgets from the 15th of the month to the 14th of the next month) turns 22 on September 14. Under the provision, the student's income would be included the budget month after the budget month in which the student turned 22. The student turned 22 in the budget month of August 15–September 14, so the student's income would be included beginning the budget month of September 15–October 14.

With this change in wording for retrospectively budgeted cases, the revisions to 7 CFR 273.10(e)(2)(i) and 7 CFR 273.21(j)(1)(vii) are adopted as proposed.

JTPA Earnings

One commenter asked for clarification on whether earnings received pursuant to the Job Training and Partnership Act (JTPA) could be excluded from income under this provision. Under the language in this final rulemaking, JTPA earnings can be excluded under the student income exclusion. Current regulations at 7 CFR 273.9(b)(1)(v) provide that JTPA earnings are earned income to the recipient. The student income exclusion of 7 CFR 273.9(c)(7) excludes earned income of students who meet its requirements. The two provisions do not conflict; one defines JTPA earnings as ''earned income,'' and the other excludes all ''earned income'' of those individuals who meet its requirements.

Summary

In summary, the Department is amending 7 CFR 273.9(c)(7) to exclude the earned income of any household member who is an elementary or secondary school student 21 years of age or younger who lives with his or her natural, adoptive, or stepparents or who is living under the parental control of a household member other than a parent. An elementary or secondary school student is someone who attends elementary or secondary school, or who attends GED or home-school classes recognized, operated, or supervised by the student's state or local school district.

Improving Access to Employment and Training Activities

Dependent Care Deduction

Section 13922 of the Leland Act amended section 5(e) of the Food Stamp Act by increasing the maximum dependent care deduction to $200 for each dependent child under the age of two, and to $175 for all other dependents. In its discussion on implementing the two-tiered deduction, Congress urged that implementation be conducted in ways that would minimize administrative burdens on State agencies. (House Conference Report No. 213, 103rd Congress, 1st Session 926 (1993)).

The Department proposed to amend 7 CFR 273.9(d)(4) and 7 CFR 273.10(e) to replace the fixed maximum deduction with the Leland Act's two-tiered approach. To address Congressional intent, the Department proposed to require State welfare agencies to adjust the deduction from $200 to $175 no later than the next regular recertification after a dependent child's second birthday.

Several commenters supported the two-tiered approach as both realistic and reasonable. Two commenters also supported the Department's proposal to allow State welfare agencies flexibility regarding when to adjust the amount of the deduction after a dependent child's second birthday. One State welfare agency thought that allowing the higher deduction amount to continue until the next recertification after the child's second birthday was confusing, and suggested that the Department require that the adjustment be made the month following the child's second birthday. Under the language in the proposed rulemaking, the State agency can adjust the deduction the month following the child's second birthday if that timeframe is easier or less confusing for the agency to implement. No other commenters objected to the Department's decision to allow a later adjustment, and so the Department is adopting the provision in the proposed rule requiring the adjustment no later than the next recertification after the child's second birthday.

The Department also proposed a conforming change to 7 CFR 273.10(d)(1)(i) to replace the term ''child care expense'' with the term ''dependent care expense.'' No adverse comments were received on this conforming change, and so the Department is adopting this amendment as provided in the proposed rulemaking.

Dependent Care Reimbursement for the Food Stamp Employment and Training Program

Section 13922 of the Leland Act amended section 6(d) of the Food Stamp Act to replace the $160 cap on dependent care reimbursements to participants in the Employment and Training Program with a requirement that State agencies reimburse the actual costs of dependent care expenses up to a limit set by the State agency. Section 13922(b) of the Leland Act establishes a methodology for determining the relevant limits, including a local market rate for dependent care.

One State welfare agency objected to the provision, stating that there is no established local market rate for dependent care for individuals over the age of 18. The Department does not see this as a significant problem. The proposed rule would require the State agency to establish a State limit for dependent care over the age of 18. The State limit cannot be more than the local market rate. The lack of a local market rate does not preclude the State welfare agency from establishing a State limit, it simply places a cap on the State limit. Without a local market rate, the State agency can establish a State limit by using a reasonable estimation of the cost of service in the area, and the amount of dependent care reimbursement payable to households would be the established State limit or the actual cost of dependent care, whichever is lower. Where there is a local market rate, State welfare agencies cannot establish State limits which exceed that rate, and the amount of the dependent care reimbursement is the lower of the local market rate, the State limit, or actual costs. Because the Department does not see this as a significant problem with the provision, the Department is adopting the provision as proposed.

Proration of Benefits

Section 13916 of the Leland Act amended section 8(c)(2)(B) of the Food Stamp Act to eliminate proration of first month's benefits if a household is recertified for food stamps after a break in certification of less than one month. Current regulations at 7 CFR 273.10(a)(1)(ii) require that a household's benefit level for the initial month of certification be based on the day of the month it applies for benefits and that the household receive benefits from the date of application to the end of the month.

The Department proposed to revise 7 CFR 273.10(a) (1)(ii) and (2)(i) to prohibit the proration of first month's benefits for all households that apply for benefits after a break in certification of less than one month.

The Department's proposal raised several issues. Several public interest groups commented that the final rule should make clear that benefits should not be prorated even if a client's previous participation was in another county. Under the language of the Leland Act, the reason for the break in certification is not relevant when applying the provision. The Department does not believe the provision requires clarification on that point. Furthermore, the administrative problems that State welfare agencies face when transferring a household's case from one jurisdiction to another are not really impacted by this provision. Applying this provision just means that if the client's break in certification is one month or less, the client's benefits are calculated from the beginning of the month, not the day the client reapplied in the new jurisdiction.

A State welfare agency requested clarification as to the provision's impact on the Department's reinstatement policy. This provision does not directly affect this policy. Under that policy, a State agency may reinstate a household without requiring a new application if the household has had a break in

certification of less than one month because of a late monthly report. The Leland provision was not meant to eliminate policies helpful to households, but only to ensure that those households that reapply after a short break in certification do not receive reduced benefits.

Another State welfare agency raised the issue of the interaction of the Leland Act proration provision and the Department's combined allotment policy contained in 7 CFR 274.2(b) (2), (3), and (4). Under that policy, a household that is eligible for expedited service and applies after the 15th of the month is entitled to a combined allotment representing the prorated portion of the first month's benefit, plus the next month's benefit. To accommodate the administrative realities of expedited service cases, the provision, like other provisions regarding verification for expedited service cases, allows for delayed verification. The commenter was concerned that dishonest applicants could continue to reapply for expedited service benefits after the 15th of a month, and under the combined provisions of the combined allotment rule and the new proration provision, continue to get six weeks' worth of benefits with little verification. Section 13916 of the Leland Act defines ''initial month'' to mean one that follows a period of more than one month in which the household was not certified to participate. A household that reapplies within one month of a break that is entitled to have its benefits not prorated under this section, is not, by definition, in its ''initial month,'' and so is not entitled to a combined allotment because a combined allotment is only available for ''initial'' allotments.

Although this question raises a serious issue, the Department does not believe that further analysis on this point is fruitful in the context of this rulemaking. The commenter's question is not really addressed to the proration or the combined allotment policies. The question really addresses the delayed verification requirements necessitated in expedited service cases. If the Department addresses the expedited service regulations in the future, we will reexamine this issue in that context.

One State welfare agency requested that States that issue benefits prospectively on a rolling fiscal month be exempted from this provision. The language of the Leland Act does not allow exceptions to the proration provision; therefore, the Department has no authority to exempt such States.

The most significant issue to arise under this provision is whether the proration of benefits provision applies only when an identical household reapplies after a break in certification of less than one month. Two State welfare agencies raised this issue in their comments.

One commenter suggested that as long as at least one household member was certified in the previous month, the household should get the benefit of the provision and its benefits should not be prorated. This approach effectively extends the provision, which was intended to benefit households, to individuals. The Department does not believe this extension would be consistent with either the statutory language or intent of section 13916 of the Leland Act. The Department does recognize the need, however, to address changing household membership in the context of this provision.

To address this issue, the Department has revised 7 CFR 273.10(a)(1)(ii) to specify that a household that reapplies after a break in certification is not considered to be the ''same'' household if the membership of the original household has changed to the extent that the certification worker must establish a new case for a portion of the original household. Under this approach, when a household's membership changes so that a new case is created, the new case's benefits are prorated, but the original case's benefits are not prorated.

The Department believes that this approach is consistent with the statutory language and intent, which was to eliminate the proration requirement for households which reapply after a break in certification of less than one month. (House Report No. 111, 103d Cong., 1st Session 30 (1993).) It also provides a reasonable limit on the provision, protecting the interests of the original household over the interests of members that leave to form new households. Because State agencies will be able to apply this provision in conjunction with established policy for creating new cases when household membership changes, this approach would not be unduly burdensome. The Department believes that it is most appropriate to have this case-related decision made by the eligibility worker, who will be most familiar with the situation.

The Department also proposed to delete 7 CFR 273.10(a)(2) (ii) and (iii). Both provisions, which prohibit proration in the first month of a household's new certification period, were made moot by section 13916 of the 1993 Leland Act. No adverse comments were received on this proposal, and so those paragraphs are deleted in this final rulemaking.

With the modification addressing the problem of changing household composition, the proposed amendments to 7 CFR 273.10(a) are adopted as final.

Implementation

Pursuant to section 13971 of the Leland Act, the Leland Act was effective, and States were required to implement it, September 1, 1994. Pursuant to Public Law 104–121, the Contract with America Advancement Act of 1996, this final rule is effective December 16, 1996; State agencies must implement it no later than June 30, 1997. State agencies will be required to adjust the cases of ongoing households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. If implementation of the Leland Act or this rule is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act. Three State welfare agencies did not agree that restored benefits were mandated by the Leland Act. One of those agencies suggested that Congress' decision to apply new provisions no later than the next recertification indicated that the Leland Act was not intended to be retroactive. As explained below, the Department has determined that section 13951 of the Leland Act requires that clients receive the benefits of its provisions as of September 1, 1994, and so benefits shall be restored, to the extent appropriate, in accordance with the Food Stamp Act.

Legislative history indicates that the Leland Act provisions were to be implemented in the Department's ''normal manner.'' (House Conference Report No. 213, 103rd Congress, 1st Session 926 (1993)). The Department's ''normal'' procedure is to set an implementation date after which households are entitled to the benefits of the new provision. If there is a statutorily mandated implementation date, the implementation date would correspond to that date. If the State agency cannot adjust the ongoing cases by this date, then benefits are restored, within the restrictions provided by the Food Stamp Act, back to the required implementation date when the case is adjusted. To help ease the administrative burden of implementing statutory changes, the Department does not require immediate adjustment or require State agencies to conduct case reviews to determine which households would benefit from legislative changes. Several public interest groups requested that the Department require State welfare agencies to notify ongoing

households of the Leland Act provisions because it would help households realize the benefits of the legislation more quickly. Although the Department in general encourages giving notice to households, the Department has decided not to require that notice be given to households because of the administrative burden and costs to State agencies.

If for any reason a State agency fails to implement on the required dates, restored benefits shall be provided, if appropriate under the provisions of the Food Stamp Act, back to the relevant implementation date or the date of application, whichever is later. In accordance with section 13951 of the Leland Act, variances resulting from implementation of the provisions of the final rule are excluded from error analysis for 120 days from June 30, 1997.

List of Subjects

7 CFR 271

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

7 CFR 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Report and recordkeeping requirements.

7 CFR 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR Parts 271, 272, and 273 are amended as follows:

1. The authority citation for Parts 271, 272, and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

2. In § 271.2, in the definition of ''Eligible foods'', paragraph (4) is amended by removing the words ''eligible households'' and adding in their place the words ''narcotic addicts or alcoholics and their children who live with them''.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(151) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(151) *Amendment No. 375.* Public Law 103–66, the Mickey Leland Childhood Hunger Relief Act, was effective and required to be implemented on September 1, 1994. The provisions of Amendment No. 375 are effective December 16, 1996, and must be implemented by June 30, 1997. The State agency shall implement the provisions of this amendment no later than the appropriate required implementation date for all households newly applying for Program benefits on or after such implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits, as may be appropriate under the Food Stamp Act, back to the appropriate required implementation date. If for any reason a State agency fails to implement on the appropriate implementation date, restored benefits shall be provided, if appropriate, back to the appropriate required implementation date or the date of application, whichever is later. Any variances resulting from implementation of this amendment shall be excluded from quality control error analysis for 120 days from June 30, 1997.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.1:

a. Paragraphs (a)(2)(i)(B) and (a)(2)(i)(C) are revised.

b. Paragraph (a)(2)(i)(D) is removed.

c. Paragraph (a)(2)(ii) is amended by removing the words ''may be a separate household from the others based on the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section'' and adding in their place the words ''may be considered, together with any of the others who is the spouse of the elderly and disabled individual, an individual household''.

d. Paragraph (e)(1)(ii) is amended by adding the words '', and their children who live with them'' after the words ''facility or treatment center''.

e. Paragraph (f)(2) introductory text is amended by adding the words ''and their children who live with them'' after the words ''on a resident basis''.

The revisions read as follows:

§ 273.1 Household concept.

(a) *Household definition.* * * *

(2) *Special definition:*

(i) * * *

(B) A child under 22 years of age who is living with his or her natural, adoptive, or stepparents, unless the child is also living with his or her own child(ren) or spouse.

(C) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child is considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, except that a child who is living with his or her own child(ren) or spouse is not considered to be under parental control.

* * * * *

5. In § 273.7:

a. A new paragraph (c)(4)(xiv) is added.

b. A new paragraph (c)(4)(xv) is added.

c. Paragraph (d)(1)(ii)(A) is amended by revising the first, seventh, and last sentences.

The additions and revisions read as follows:

§ 273.7 Work requirements.

* * * * *

(c) *State agency responsibilities.* * * *

(4) * * *

(xiv) The Statewide limit(s) for dependent care reimbursements as established by the State agency. The limit(s) shall not be less than the dependent care deduction amounts specified under § 273.9(d)(4).

(xv) The local market rates of dependent care providers in the State. State agencies shall adopt the local market rates already established by programs under section 402(g) of the Social Security Act. State agencies shall establish separate local market rates for categories of care relevant to food stamp E&T which are not addressed under section 402(g) of the Social Security Act and include such rates in the E&T State Plan.

* * * * *

(d) *Federal financial participation.*

(1) *Employment and training grants.* * * *

(ii) *Participant reimbursements.* * * *

(A) The costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest. * * * If more than one household member is required to participate in the E&T program, the

State agency shall provide reimbursement for the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest, for each dependent in the household, regardless of the number of household members participating in the E&T program. * * * A State agency may claim 50 percent of costs for dependent care services provided or arranged by the State agency up to the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest.

* * * * *

6. In § 273.8:

a. Paragraph (h)(1) is amended by removing the period at the end of paragraph (h)(1)(v) and adding in its place the word ''; or'' and adding a new paragraph (h)(1)(vi).

b. Paragraph (h)(3) is revised.

c. Paragraph (h)(6) is amended by revising the first sentence of the paragraph.

d. Paragraph (i)(4) is amended by removing the second sentence.

The additions and revisions read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(h) *Handling of licensed vehicles.* * * *

(1) * * *

(vi) Necessary to carry fuel for heating or water for home use when such transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households shall receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households shall not be required to furnish documentation, as mandated by § 273.2(f)(4), unless the exclusion of the vehicle is questionable. If the basis for exclusion of the vehicle is questionable, the State agency may require documentation from the household, in accordance with § 273.2(f)(4).

* * * * *

(3) Each licensed vehicle not excluded under paragraph (h)(1) of this section shall be evaluated individually to determine its fair market value resource exclusion limit, and that portion of the resource exclusion limit which exceeds $4,500 for FY 1993, shall be attributed in full toward the household's resource level regardless of any encumbrances. The $4,500 fair market value resource exclusion limit for licensed vehicles shall remain in effect through August 31, 1994. On September 1, 1994 through September 30, 1995, the fair market value resource exclusion limit shall be increased to $4,550. On October 1, 1995 through September 30, 1996, the fair market value resource exclusion limit shall be increased to $4,600. On October 1, 1996 and each October 1 thereafter, using a base of $5,000, the fair market value resource exclusion limit for licensed vehicles shall be adjusted to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics for the 12-month period ending on June 30 preceding the date of such adjustment and rounded to the nearest $50. Any value in excess of the appropriate fair market value resource exclusion limit shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicle. For example, in November 1994 a household owning an automobile with a fair market value of $5,550 shall have $1,000 applied toward its resource exclusion level. Any value in excess of $4,550 (the fair market value resource exclusion limit for that time period) shall be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle shall be appraised individually. The fair market value resource exclusion limit of two or more vehicles shall not be added together to reach a total fair market value resource exclusion in excess of the fair market value resource exclusion for the appropriate time period.

* * * * *

(6) In summary, each licensed vehicle shall be handled as follows: First, the vehicle shall be evaluated to determine if it is an income producer, a home, necessary to transport a disabled household member, or necessary to carry fuel for heating or water for home use. * * *

* * * * *

7. In § 273.9:

a. Paragraph (c)(1) is revised.

b. The first sentence of paragraph (c)(7) is revised, a sentence is added after the first sentence, and the last sentence is removed.

c. Paragraph (d)(4) is amended by removing the words ''$160 per month, per dependent'' in the last sentence and adding in their place the words ''$200 a month for each dependent child under two (2) years of age and $175 a month for each other dependent''.

The revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions.* * * *

(1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and include meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. Payments made to a third party on behalf of the household are included or excluded as income as follows:

(i) *Public assistance (PA) vendor payments.* PA vendor payments are counted as income unless they are made for:

(A) Medical assistance;

(B) Child care assistance;

(C) Energy assistance as defined in paragraph (c)(11) of this section;

(D) Emergency assistance (including, but not limited to housing and transportation payments) for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance payments for households living in transitional housing for the homeless;

(F) Emergency and special assistance. PA provided to a third party on behalf of a household which is not specifically excluded from consideration as income under the provisions of paragraphs (c)(1)(i)(A) through (c)(1)(i)(E) of this section shall be considered for exclusion under this provision. To be considered emergency or special assistance and excluded under this provision, the assistance must be provided over and above the normal PA grant or payment, or cannot normally be provided as part of such grant or payment. If the PA program is composed of various standards or components, the assistance would be considered over and above the normal grant or not part of the grant if the assistance is not included as a regular component of the PA grant or benefit or the amount of assistance exceeds the maximum rate of payment for the relevant component. If the PA program is not composed of various standards or components but is designed to provide a basic monthly grant or payment for all eligible households and provides a larger basic grant amount for all households in a particular category, e.g., all households with infants, the larger amount is still part of the normal grant or benefit for such households and not an ''extra'' payment excluded under this

provision. On the other hand, if a fire destroyed a household item and a PA program provides an emergency amount paid directly to a store to purchase a replacement, such a payment is excluded under this provision. If the PA program is not composed of various standards, allowances, or components but is simply designed to provide assistance on an as-needed basis rather than to provide routine, regular monthly benefits to a client, no exclusion would be granted under this provision because the assistance is not provided over and above the normal grant, it is the normal grant. If it is not clear whether a certain type of PA vendor payment is covered under this provision, the State agency shall apply to the appropriate FCS Regional Office for a determination of whether the PA vendor payments should be excluded. The application for this exclusion determination must explain the emergency or special nature of the vendor payment, the exact type of assistance it is intended to provide, who is eligible for the assistance, how the assistance is paid, and how the vendor payment fits into the overall PA benefit standard. A copy of the rules, ordinances, or statutes which create and authorize the program shall accompany the application request.

(ii) *General assistance (GA) vendor payments.* Vendor payments made under a State or local GA program or a comparable basic assistance program are excluded from income except for some vendor payments for housing. A housing vendor payment is counted as income unless the payment is for:

(A) Assistance provided for utility costs;

(B) Energy assistance (as defined in paragraph (c)(11) of this section);

(C) Housing assistance from a State or local housing authority;

(D) Emergency assistance for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance for households living in transitional housing for the homeless;

(F) Emergency or special payments (as defined in paragraph (c)(1)(i)(F) of this section; or

(G) Assistance provided under a program in a State in which no GA payments may be made directly to the household in the form of cash.

(iii) *Department of Housing and Urban Development (HUD) vendor payments.* Rent or mortgage payments made to landlords or mortgagees by HUD are excluded.

(iv) *Educational assistance vendor payments.* Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance payable directly to the household.

(v) *Vendor payments that are reimbursements.* Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household in accordance with paragraph (c)(5) of this section.

(vi) *Demonstration project vendor payments.* In-kind or vendor payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under a federally authorized demonstration project or waiver of provisions of Federal law shall be excluded from income.

(vii) *Other third-party payments.* Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. This distinction is illustrated by the following examples:

(A) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

(B) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

(C) A household receives court-ordered monthly support payments in the amount of $400. Later, $200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household. For example, a court awards support payments in the amount of $400 a month and in addition orders $200 to be paid directly to a bank for repayment of a loan. The $400 payment is counted as income and the $200 payment is excluded from income. Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

* * * * *

(7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 22, who is an elementary or secondary school student, and who lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent. For purposes of this provision, an elementary or secondary school student is someone who attends elementary or secondary school, or who attends classes to obtain a General Equivalency Diploma that are recognized, operated, or supervised by the student's state or local school district, or who attends elementary or secondary classes through a home-school program recognized or supervised by the student's state or local school district. * * *

* * * * *

8. In § 273.10:

a. The third sentence of paragraph (a)(1)(ii) is amended by adding the words ''of more than one month, fiscal or calendar depending on the State's issuance cycle,'' after the words ''following any period'', replacing the comma after the words ''not certified for participation'' with a period, and removing the remainder of the sentence.

b. The fourth sentence of paragraph (a)(1)(ii) is removed and a new sentence is added in its place.

c. Paragraphs (a)(2)(ii) and (a)(2)(iii) are removed, and the designation for paragraph (a)(2)(i) is removed.

d. Newly redesignated paragraph (a)(2) is further amended by adding the words ''more than one month'' after the words ''If an application for recertification is submitted'' in the third sentence.

e. The sixth sentence of paragraph (d)(1)(i) is amended by removing the word ''child'' the first time it appears and adding ''dependent'' in its place.

f. A sentence is added to the end of paragraph (d)(4).

g. Paragraph (e)(1)(i)(E) is amended by removing the words ''maximum amount

of $160 per dependent'' and adding in their place the words ''maximum amount as specified under § 273.9(d)(4) for each dependent''.

h. A new paragraph (e)(2)(i)(E) is added.

i. Paragraph (f)(2) is removed and reserved.

The additions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(a) *Month of application.*

(1) *Determination of eligibility and benefit levels.* * * *

(ii) * * * For purposes of this provision, a household is not considered to be the same household as the previously participating household if the certification worker has established a new food stamp case for the household because of a significant change in the membership of the previously participating household.

* * *

* * * * *

(d) *Determining deductions.* * * *

(4) *Anticipating expenses.* * * * If a child in the household reaches his or her second birthday during the certification period, the $200 maximum dependent care deduction defined in § 273.9(d)(4) shall be adjusted in accordance with this section not later than the household's next regularly scheduled recertification.

* * * * *

(e) *Calculating net income and benefit levels.* * * *

(2) *Eligibility and benefits.*

(i) * * *

(E) If a household contains a student whose income is excluded in accordance with § 273.9(c)(7) and the student becomes 22 during the month of application, the State agency shall exclude the student's earnings in the month of application and count the student's earnings in the following month. If the student becomes 22 during the certification period, the student's income shall be excluded until the month following the month in which the student turns 22.

* * * * *

9. In § 273.21, the first sentence of paragraph (j)(1)(vii)(A) is revised and a new sentence is added after the first sentence to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB)

* * * * *

(j) *State agency action on reports.*

(1) *Processing.* * * *

(vii) * * *

(A) Earned and unearned income received in the corresponding budget month, including income that has been averaged in accordance with paragraph (f) of this section. The earned income of an elementary or secondary school student excluded in accordance with § 273.9(c)(7) shall be excluded until the budget month following the budget month in which the student turns 22.

* * *

* * * * *

Dated: September 27, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–26072 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–30–U

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7 CFR Parts 271, 272, 273, and 275

[Amendment No. 362]

RIN 0584–AB58

Food Stamp Program; Child Support Deduction

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a provision of the 1993 Mickey Leland Childhood Hunger Relief Act establishing a deduction for households that make legally obligated child support payments to or for a nonhousehold member. The provision results in increased benefits for households that pay child support, thereby enabling more parents to meet their legal obligation. A proposed rule was published December 8, 1994.

DATES: The provisions of this rule are effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, or (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Order 12372

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

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The reporting and recordkeeping burden associated with the application, certification, and continued eligibility of food stamp applicants is approved under OMB No. 0584–0064.

To receive the child support deduction authorized by 7 CFR 273.9(d) of this rule, households must report the child support obligation and amounts paid on the application form and provide verification. The methodology used to determine the current burden estimates for all applications assumes that every applicant will complete every line item on the application form. The model food stamp application and the model application worksheet were revised in 1995 to include a line for the child support deduction and the associated burden is included in the current burden estimate of .2290 hours per response. Therefore, the amendment to 7 CFR 273.9(d) made by this rule to add a child support deduction does not alter the current burden estimate.

Section 273.12(a) of this rule requires that households report changes in the legal obligation to pay child support during the certification period; changes in the amount of child support paid must be reported when the household applies for recertification. The rule allows State agencies to require households to report child support information monthly or quarterly. Section 273.10(f) provides that households that are not required to report the amount of child support paid during the certification period on a monthly or quarterly report shall be certified for no more than 6 months. State agencies that currently require

monthly reporting by some categories of households may require monthly reporting households entitled to the child support deduction to report changes in child support on that report. This option does not alter the current burden estimate for the monthly report form of .1617 hours per response because these households are already included in the number of households used to determine household burden associated with the monthly report form.

State agencies that do not use monthly reporting to obtain information about child support payments may require households to report child support information quarterly. State agencies may use the change report form currently used for reporting other changes or may develop a separate report form. The change report form will also be used for households that do not report monthly or quarterly to report changes in the child support obligation. The current estimate of burden hours assumes that every household will submit at least one change report form during its certification period. Therefore, the estimated number of reports received is related to the length of a household's certification period. Under this rule, some households would be recertified or submit a quarterly report in lieu of a change report. The current burden estimate for the change report form already takes into account the variations in the length of certification periods. Therefore, the requirement to report certain changes in child support is not expected to alter the current burden estimate of .1617 hours per response for the change report form.

Comments. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Wendy Taylor, OIRM, Room 404–W, Office of Management and Budget, Paperwork Reduction Project (OMB No. 0584–0064), Washington, D.C. 20503 and Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, D.C. 20250. Comments and recommendations on the proposed information collection must be received by December 16, 1996.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Impact Analysis

Need for Action

This action is required as a result of the Mickey Leland Childhood Hunger Relief Act which amends the Food Stamp Act of 1977, as amended, to establish a child support deduction for households that pay legally obligated child support to a nonhousehold member.

Benefits

The child support deduction will increase the number of potentially eligible food stamp recipients and will increase the benefit level of households eligible for the deduction.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by $125 million in Fiscal Year 1996; $130 million in Fiscal Year 1997; and $145 million in Fiscal Year 1998.

Background

On December 8, 1994, we published a proposed rule at 59 FR 63265 to implement section 13921 of the Mickey Leland Childhood Hunger Relief Act, Chapter 3, Title XIII, Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, enacted August 10, 1993, (Leland Act), which amends section 5(e) of the Food Stamp Act to add a deduction for legally obligated child support payments made by a household member to or for a nonhousehold member.

We accepted comments through February 6, 1995, and received letters from 27 commenters, including State and local welfare agencies, State child support enforcement (CSE) agencies, and State employees. We are not addressing comments that are technical or beyond the scope of this rulemaking or comments on the requirement to establish a deduction. The requirement to establish a deduction is mandated by statute and is not subject to comment. All other comments are addressed below.

1. Allowable Deductions

A. Legal obligation. We proposed to add a new paragraph to 7 CFR 273.9(d) to provide that households would be eligible for a deduction for child support paid by a household member to or for a nonhousehold member, provided the household member was legally obligated to pay child support. Section 273.2(f)(10)(xii) of the proposed rule provided that a legal obligation entitling a payor to the deduction could be established by a court or administrative order or a legally enforceable separation agreement. Alimony payments would not be deductible.

Comments

Three of the seven comments on this provision supported the proposal. Two commenters suggested that payments be allowed even if they are not legally obligated and another indicated that a deduction should be allowed for the full amount paid even if the payment exceeds the amount the household member is legally obligated to pay. Commenters also requested clarification of the terms ''legally enforceable separation agreement'' and ''administrative process'' as an alternative to a court order.

Response

The Leland Act allows a deduction only for ''legally obligated'' child support; therefore, we are unable to allow a deduction for amounts the household member is not legally obligated to pay. State agencies may determine what constitutes a legal obligation to pay child support under State law. As used in the proposed rule, a ''legally enforceable separation agreement'' is a contract between the parties that would be enforceable through court action. State agencies may apply State law to determine what is an enforceable contract. The term ''administrative process'' refers to the process authorized by State law for establishing an obligation to pay child support and determining the amount of child support. We believe the term ''legally obligated child support payments'' is consistent with the legislation and sufficiently broad to allow application of State law and procedures. As indicated below in the discussion of verification requirements, we are not including in this final rule

the proposed examples of a legal obligation.

The proposed rule would have provided in § 273.9(d)(7) that a deduction be allowed for child support payments paid by a household member ''to or for a nonhousehold member. * * *'' Subsequent to publication of the proposed rule, it came to our attention that an obligation to pay child support may continue even if the child or the child and other parent are in the same household as the individual paying the child support. This may occur, for example, if the child moves back and forth between parents or if the payor has a continuing obligation to make arrearage payments to the State Child Support Enforcement (CSE) agency after the family is reunited.

The regulation as proposed would not have prohibited allowing the deduction when a legally obligated child support payment was made to an individual or agency outside the household even if the child for whom the support was paid was a household member. Therefore, we believe there is no need to revise the proposed language. No deduction would be allowed, of course, if a child support payment is made to a household member.

B. Vendor payments. The proposed rule provided in new § 273.9(d)(7) that payments a noncustodial parent makes to a third party (such as a landlord or utility company) on behalf of the nonhousehold member (vendor payments) would be included in the deduction. Also, the rule proposed that legally obligated vendor payments made by the noncustodial parent to obtain health insurance for the child would be deductible.

Comments

Eight commenters addressed vendor payments and several had questions regarding how the allowable portion of the noncustodial parent's health insurance premium would be determined. One commenter recommended that a deduction be allowed for any vendor payment made by a noncustodial parent on behalf of a nonhousehold member. A State agency asked whether a deduction is allowed when the noncustodial parent pays a landlord but the method of payment (whether the payment is to be made directly to or for the nonhousehold member or indirectly as a vendor payment) is not specified in the court order or separation agreement. Other commenters recommended that vendor payments for clothes or groceries not be deductible. Some commenters recommended that vendor payments paid in lieu of alimony or spousal support be allowed as a deduction, while other commenters believed these payments should not be deductible. Other commenters were concerned that the types of payments considered to be child support would be different for food stamp and CSE purposes.

Response

We are not providing detailed requirements for determining the amount of the allowable health insurance premium because this may vary with the type of coverage and the nature of the obligation. We believe State agencies are in a better position to work out a method that is reasonable and not overly burdensome. Employers or insurers could be contacted for information regarding the best proration method.

The household member may make vendor payments for various expenses of the nonhousehold member, but unless the household member is legally obligated to pay the expense, the payments are not deductible. A legally obligated payment is deductible whether it is made as a vendor payment or as a direct payment to or for the nonhousehold member. Absence of designation of a method of payment (directly to the household or indirectly to a provider) in the court order or separation agreement does not prevent the payment from being deductible as long as it can be verified. We are unable to allow vendor payments obligated under an alimony or spousal support order because the Leland Act limits the deduction to child support payments.

Child support is generally paid through a court or State child support enforcement agency or directly to the household containing the child. We consulted with the Office of Child Support Enforcement of the U.S. Department of Health and Human Services in developing both the proposed rule and this final rule. Unlike the Food Stamp Program, CSE does not earmark payments made toward various aspects of a child support obligation, but instead reflects the total child support paid. A household member may be required to pay rent or medical expenses on behalf of a nonhousehold member, for example, but the amount would be included in the total amount the household member is ordered to pay instead of being itemized in the CSE record. Therefore, the payments shown in the CSE record may not match those reported and verified by the household.

Despite potential inconsistencies between CSE records and food stamp records of child support payments, we believe households should be allowed a deduction for child support paid by vendor payments. We believe the intent of Congress is to allow vendor payments if the household member has a legal obligation to pay them. As reported in the preamble to the proposed rule at 59 FR 63266, the legislative history of the Leland Act states: ''Since the purpose of this amendment is to encourage absent parents to live up to the full extent of their child support obligations, the value of legally binding child support that is provided in-kind, such as payments of rent directly to the landlord, would also be eligible for this deduction.'' See 114 *Congressional Record* S10726, August 6, 1993.

To satisfy the requirement that the deduction be allowed only for legally obligated child support and the desire of Congress to include vendor payments as allowable deductions, we are clarifying in this rule that any legally obligated payments made, whether directly to or for the nonhousehold member or indirectly as a vendor payment, are deductible. We are not adopting the examples of vendor payments included in the proposed rule (health insurance payments and payments to utility providers or landlords) because they are discussed in the preamble and are not needed in the final rule.

The proposed rule included references to verification and reporting requirements in new § 273.9(d)(7). Since these requirements are contained in other sections of current regulations, we are removing any reference to verification and reporting requirements from § 273.9(d)(7) in the final rule.

The proposed requirement to allow a deduction for legally obligated child support payments made to third parties is adopted as final at § 273.9(d)(7), with clarifications and removal of unnecessary language.

C. Arrearages. The proposed rule provided in new § 273.9(d)(7) that households with at least a 3-month record of child support payments would be eligible for a deduction for amounts paid toward child support arrearages in addition to the current month's obligation. Households with less than a 3-month record would not be allowed a deduction for arrearages, or back payments.

Comments

Seven State agencies commented on this provision. Three supported the proposal to allow a deduction for back payments and felt that a deduction should be allowed even if the household had no payment record. Three State agencies were concerned that allowing a deduction for arrearages would result in a double deduction. They indicated that allowing a deduction for arrearages

could skew an average and would make estimating future arrearage payments difficult. One State agency asked if arrearages could be averaged into the prospective obligation even when the court order did not address the arrearage. Another State agency felt that the total amount of the monthly deduction should be no more than the amount of the current obligation on a monthly basis.

One commenter suggested that if wages are being garnished for child support, the full amount should be allowed even if it includes arrearages and the household does not have a payment history yet because garnishment assures that it will be paid. Three commenters asked how one-time collections of past-due child support, such as tax refund intercepts, would be handled in estimating the deduction.

Response

The Leland Act and its legislative history require that arrearage payments be allowed in calculating a household's child support deduction. The Leland Act specifies that a deduction is to be allowed for payments ''made.'' The legislative history at 114 *Congressional Record* S10725 indicates that the intent of the provision is to encourage the payment of child support: ''Now these payments are counted as income to the family that pays them and to the family that receives them. This is not only unfair, it is a disincentive for absent fathers to pay child support. We must remove current disincentives for absent parents to take responsibility for their children.* * *'' The Conference Report (House Report No. 213, 103d Congress, 1st Session, 1993, p. 925) states: ''The managers do not intend for this procedure [averaging and retrospective budgeting] to deny a household a deduction for any child support actually paid.* * *'' Income used to pay child support for a child in another household depletes available income for support of the payor's household. The child support order or separation agreement need not require payment of arrearages since the initial obligation to pay already exists in the order or agreement; nor is a payment schedule necessary for the deduction to be allowed. The food stamp State agency may, however, work with the CSE agency and the household to establish such a schedule as the basis for anticipating the amount of deduction.

We recognize that anticipating the amount of future arrearage payments will be difficult. That is why the proposed rule did not allow a deduction for arrearages to households without a payment history. However, we realize that this makes administration of the provision more complex. The intent of Congress was to minimize burdens on State agencies and households. Therefore, we have decided to allow a deduction for arrearages even for households without a payment history. State agencies will be able to anticipate the likelihood of future payments based on the household's available income. State agencies also have the option of budgeting the child support deduction retrospectively while budgeting other circumstances prospectively. Verification of payments received could be obtained, if necessary, from the payee. In addition, child support arrearages are collected through garnishment of wages or unemployment benefits in some cases, and verification of the garnishment will be readily available. As stated above, the deduction is intended for payments ''made.'' In the case of arrearages where no payment history has been established, the State agency should exercise additional caution when budgeting for the deduction. If the eligibility worker has no basis for expecting future payments toward arrearages, or no basis for expecting payments to equal those estimated by the applicant, no arrearage amount should be included in an average used to project the deduction for the certification period. Provisions for reducing the likelihood that households will receive an inappropriate deduction are described with the budgeting and reporting requirements below.

No amount would be budgeted based on amounts collected through tax intercept. Unlike child support paid through garnishments from current income, child support collected through tax intercept is taken from a lump sum payment. The intent of the child support deduction is to make it possible for households to pay child support out of available income. We believe it would be inconsistent with this intent to allow a deduction for amounts collected through tax intercept.

The proposed provision in new § 273.9(d)(7) to allow a deduction for arrearage payments is adopted with a change to remove the requirement that households must have a payment history to receive the deduction.

2. Verification

A. Household verification. The proposed rule would have added a new mandatory verification requirement to the regulations at 7 CFR 273.2(f)(1). The proposed rule provided that the State agency would verify the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support paid. The household would be responsible for providing verification of the legal obligation, the obligated amount, and the amount paid. According to the proposed rule, the State agency would be required to accept documentation verifying a household's actual payment, such as canceled checks, wage withholding statements, verification of withholding from unemployment compensation, and statements from the custodial parent regarding direct payments or vendor payments the household member pays or expects to pay. The proposed rule provided that documents establishing an obligation to pay would not be accepted as verification of the household's actual monthly child support payments. The proposed rule would also have amended 7 CFR 273.2(f)(8) to require verification at recertification of the amount of legally obligated child support a household member pays to a nonhousehold member.

Comments

We received comments from five commenters relating to various aspects of the household verification requirements and three comments concerning possible disputes between payees and payors. One State agency agreed with the proposal to require that both the legal obligation and actual amount paid be verified. Another State agency thought there was an inconsistency between the provision in proposed § 273.9(d)(7) that no deduction be allowed if the household fails or refuses to obtain necessary verification and the proposed requirement in new § 273.2(f)(1)(xii) establishing the State agency's responsibility for verifying entitlement to the deduction and the amount. A State agency indicated that the responsibility for verification rests with the payor, with appropriate help from the worker. Another commenter asked what kind of verification should be accepted in new cases. One commenter indicated that the rule provided a clear definition of acceptable verification for a legal obligation to pay child support but not for a legally enforceable separation agreement. Another indicated that any amount collected by CSE establishes that it was legally obligated.

One of the commenters indicated that many noncustodial parents do not keep good records and rely on the CSE agency to provide a record of child support payments. Another suggested that food stamp applicants without CSE cases who want the deduction should be required to open a CSE case. Making

payments through CSE would facilitate verification.

Several commenters raised the issue of possible disputes between the custodial and noncustodial parents regarding the amount of child support received and paid if both parents are members of food stamp households. One State agency wanted to know if the State agency is obligated to compare the amount reported as child support income by the payee household with the amount claimed as a deduction by the payor household and to adjust the figures if the amounts differ. Commenters were concerned about how disputes would be resolved, and one suggested that no deduction be allowed if the amount of child support paid is disputed.

Response

We are modifying the proposed requirement to verify child support information to remove unnecessary language concerning the household's responsibility to provide verification and the types of acceptable documentation. Verification requirements, including the State agency's obligation to assist the household, the sources of verification and responsibility for providing verification are already included in the regulations at 7 CFR 273.2(f) (4) and (5). If no verification is available because a household member has recently become responsible for paying child support, the State agency shall anticipate the amount to be budgeted initially based on verification of the amount of the obligation and the amount the household member expects to pay monthly. (Requirements for budgeting and reporting changes are discussed later in this preamble.)

We agree with the commenter that the existence of a CSE case makes it easier to verify that child support is or is not being paid, and we would support State agency measures to encourage households to use CSE child support services. However, we have no authority to require that they do so. Services are available to any individual who is not otherwise eligible as a recipient of Aid to Families with Dependent Children (AFDC) and/or Medicaid. We believe the resolution of differences regarding claims of child support paid or received is best left to State agencies to address. If State agencies encourage payor households to use canceled checks, money order receipts, or receipts signed by the custodial parent as verification of payment, there should be few occasions when the verification is questionable. Also, although the household is the primary source for verification, the State agency may also obtain verification from CSE records, courts, or other sources.

State agencies may, but are not required to compare the payee and payor records when both are food stamp households. We are not imposing a requirement on State agencies to compare payor and payee files each month because the payment and income amounts reflected legitimately may not match. This could occur, for example, if the cases are on different reporting and budgeting systems, vendor payments are involved, or averaging is used.

The proposal to add a mandatory verification requirement for the child support deduction to 7 CFR 273.2(f)(1)(xii) is adopted as final with clarification and removal of unnecessary language. Because of changes in the final rule regarding the reporting requirements for child support, we are revising the requirement at 7 CFR 273.2(f)(8)(i)(A) for verifying the amount of legally obligated child support at recertification to require verification of changes in the legal obligation, including the amount of the obligation, and the amount of child support the household pays. We are also adding a sentence to provide that reportedly unchanged information shall be verified only if the information is incomplete, inaccurate, inconsistent or outdated.

B. Matching requirements. Also included in § 273.2(f)(1)(xii) of the proposed rule was a requirement that the State agency enter into agreements with CSE agencies to obtain data regarding the child support obligation and the household's payment record from CSE automated data files before recertification or, for households certified for 3 months or fewer, prior to alternate recertifications. The match with the records of food stamp recipients receiving a child support deduction was intended to provide a record of child support paid or to identify cases in which no payments were recorded. The State agency would then have this information available for use at recertification. The proposed rule at 7 CFR 273.2(b)(2) also would have required State agencies to notify households on the application that child support information may be verified with CSE agencies or courts.

Comments

The proposed matching requirement generated more comments than any other, and only two commenters found the proposal reasonable. Fourteen commenters expressed concern about this requirement. State and county welfare offices and CSE agencies objected to the requirement on the grounds that (1) a match, particularly an interstate match, would not be cost-effective, (2) CSE systems do not contain all the required information on all cases, (3) resolving discrepancies between information provided by the household and that obtained from CSE records would be burdensome, (4) the match is unnecessary because adequate verification is available from households and other sources, and (5) CSE automated data systems are being implemented now and modifications cannot be made at this time. Commenters suggested that on-line access to CSE records for advance verification would be preferable to a post-certification match. They requested that the match requirement be eliminated, be made optional, or be delayed until implementation of CSE automated data systems is completed.

In addition to concerns expressed about the matching requirement, some State agencies had specific questions about its application. Two commenters questioned the necessity of notification to applicants that child support information would be checked through computer matching with CSE. One commenter asked what action the State agency would be required to take if a CSE match showed a change greater than $50 in child support paid. Another asked what action the State agency should take if the household verified a payment but CSE had no record.

Response

The purpose in requiring State agencies to enter into an agreement with CSE to match State agency records with CSE records was to ensure that households would not continue to be given a deduction when they were not actually making monthly payments. Under the proposed rule, there was no requirement for reporting changes in child support paid during the certification period unless the State agency required the household to report quarterly or monthly. We believed matching would enable the State agency to verify the degree to which the household had met its obligation and determine whether it should continue to receive a deduction.

We continue to believe that matching the household's food stamp record of child support payments with CSE records is beneficial. However, we have considered all comments and have decided not to mandate a match. Where reasonable, State agencies should verify child support information by all means available. Many States may not yet be equipped to match child support information via automated CSE agency records. However, the goal is to ensure that States take every opportunity to

verify data provided by a recipient regarding another State or Federally administered program. Verification could take place by match, by checking available data on an on-line system or by other means. Our expectation is that State agencies will seek every opportunity to institute an appropriate verification system between programs.

We are leaving it up to State agencies to determine the extent to which automated data systems can be used at this time. Some State agencies already have the capability of conducting on-line matches with CSE records and routinely consult these records before authorizing a deduction. We strongly encourage all State agencies to develop and use this capability as soon as possible. In the meantime, we believe the reporting and certification period requirements described below will provide protection against abuse of the deduction.

We also agree with the commenters that the proposed amendment to 7 CFR 273.2(b)(2) requiring State agencies to notify applicants on the application form that information provided may be checked with CSE records is unnecessary. Regulations at 7 CFR 273.2(b)(3) require all State agencies to use an application form designed by FCS unless a deviation is approved. The Food Stamp Program model application form (FCS–385) already contains language notifying households that information provided by the applicant will be compared with other Federal, State and local records using computer matching systems. Therefore, it is unnecessary to amend 7 CFR 273.2(b)(2) to include the proposed specific notice requirement, and we are not adopting the proposed amendment.

3. Budgeting and Reporting Requirements

The proposed rule provided State agencies three options for handling budgeting and reporting requirements for child support. Under Option 1, change reporting, the anticipated child support payment would be budgeted either prospectively or retrospectively. For change reporting households with a record of 3 or more months of paid child support, the State agency would average at least 3 months of legally obligated child support and use the average as the household's child support deduction for the certification period, taking into account any anticipated changes in the legal obligation or other changes that would affect the payment. Households with an established payment history of 3 or more months would have to report only changes in the legal obligation that occurred during the certification period.

For change reporting households without a record of at least 3 months of paid, legally obligated child support, the State agency would base the child support deduction on anticipated payments, exclusive of payments toward arrearages. These households would have to report changes of more than $50 from the amount used in the most recent certification action, excluding payments toward arrearages, until a payment history was established. They would also have to report changes in the legal obligation.

Under Option 2, quarterly reporting, State agencies could require households claiming the child support deduction to report their actual payments quarterly. These households would have the payments budgeted either prospectively or retrospectively. They would be required to report actual amounts paid and changes in the legal obligation.

Under Option 3, monthly reporting, a State agency could require households claiming the child support deduction to report monthly. After the beginning month or months, the household would have to be budgeted retrospectively and would report changes in the amount paid and the legal obligation.

The proposed rule also provided that for retrospectively budgeted households in the beginning month or months of certification, the State agency would either average past payments if the household had a payment history or use an estimate of child support the household expected to pay, excluding arrearages, if the household had no payment history.

Comments

Three of the eight commenters on budgeting and reporting agreed with the proposal. We received no specific comments on the proposal to allow quarterly reporting of child support payments.

Several State agencies opposed the reporting provisions as unnecessarily limiting and burdensome and indicated that child support should be treated the same as any other type of income deduction. Others objected to the proposed requirement that change reporting households without a payment history report a change of more than $50 in child support paid and suggested alternative reporting requirements. Several commenters objected to the averaging requirements for prospective and retrospectively budgeted households in proposed § 273.10(d)(8). We are not describing these comments individually because, as indicated below, we are not adopting the proposed $50 reporting requirement and the averaging requirements. One commenter opposed the requirement to report changes in the legal obligation between recertifications on the grounds that these changes rarely happen. Another State agency indicated that the child support order will include the age at which the legal obligation stops. The State agency can track that date and remove the deduction when the child reaches that age.

Response

We are retaining the three reporting and budgeting options contained in the proposed rule: change reporting with prospective or retrospective budgeting, quarterly reporting with prospective or retrospective budgeting, and monthly reporting with retrospective budgeting. However, in response to comments, we are simplifying the requirements and providing increased State agency flexibility.

As indicated by the legislative history, Congress intended that regulations implementing the child support deduction minimize burdens on State agencies and households. The Conference Report (House Conference Report No. 213, 103rd Congress, 1st Session, 1993, pages 925–26) states: ''For example, States could be permitted to base a household's deduction for a certification period on the average amount it paid in the prior certification period (with appropriate adjustments for any changes in the order) rather than having to keep track throughout a certification period of how much the absent parent actually pays each month. The managers do not intend for this procedure to deny a household a deduction for any child support actually paid, but rather the intention is to give States the option to use consistent budgeting procedures that would minimize the number of changes they would be required to make. State agencies correctly following such procedures would not be charged with quality control errors if the amount of child support that a household paid increased or decreased as long as the State agency adjusted the household's allotment prospectively at its next recertification.''

To more fully meet the intent of Congress and address the concerns of commenters, we are modifying the reporting and budgeting requirements of the three options. This final rule allows State agencies the option of certifying households receiving a child support deduction more frequently or requiring periodic reporting of child support information. We believe this coincides with procedures State agencies currently use for identifying changes in

the circumstances of households with earnings.

As proposed, a new § 273.12(a)(1)(vi) adds the requirement that households report changes in the legal obligation to pay child support. In accordance with 7 CFR 273.12(a)(2), the household would be required to report these changes within 10 days. Although changes in the legal obligation may be infrequent, the requirement to report such a change may prevent overissuance of benefits to households no longer obligated to pay child support.

Some State agencies may track the age of the child for whom the support is provided and the date when the obligation stops; others may rely on households to report the change. Therefore, we are retaining the requirement.

Under the change reporting option as modified by this rule, households with less than a 3-month record of child support payments are not required to report a change of more than $50 in child support payments, as was proposed. Under this final rule, a limit on certification period length for these households would replace the reporting requirement. The final rule provides at § 273.10(f)(9) that State agencies are required to certify change reporting households without a record of regular child support payments for no more than 3 months, as described under ''Certification Periods'' below. State agencies are required to certify change reporting households with a payment history for no more than 6 months.

Therefore, we are adopting as final the addition of paragraph (vi) to 7 CFR 273.12(a) to provide that change reporting households are required to report changes in the legal obligation to pay child support.

We are also modifying the requirements for option 2, quarterly reporting, to increase State agency flexibility. We are not adopting the provision of proposed § 273.12(a)(1)(vi) that would have required quarterly reporting households to report actual monthly amounts paid in addition to changes in the legal obligation or the provision in proposed § 273.12(a)(4)(i) that the State agency would have to provide the household with the quarterly report no later than the end of the second month in the quarter.

We are also not adopting the provisions of proposed § 273.12(a)(4)(ii) and § 273.12(b)(2) (i) through (x) regarding the content of the quarterly report form. State agencies may determine and specify on the quarterly report the child support information the household is required to report and the date by which it must be reported. State agencies may, but are not required to remind the household about other changes that have to be reported. They may also advise the household that the State agency will act on changes in child support the household reports before submitting the quarterly report.

The requirements in proposed paragraphs 273.12(b)(2) (iii), (iv), (v), (vi), and (x) for the quarterly report form are already provided in 7 CFR 273.21(h)(2) (iii), (iv), (v), (vi) and (vii) for the monthly reporting form. Therefore, we are adding a reference in § 273.12(b)(2) to 7 CFR 273.21(h)(2) (iii) through (vii). With these changes, the proposed requirements for child support quarterly reporting are adopted as final.

Under Option 3, the State agency may require categories of households to report child support information on a monthly report. The proposed rule would have amended 7 CFR 273.21(h)(2) to add a paragraph specifying that if a State agency elects to require reporting of child support payments on the monthly report form, the State agency shall require the household to report changes in the actual monthly amount of child support paid and any changes in the legal obligation to pay child support. We are not adopting this proposed amendment. State agencies may determine what information households are required to report on the monthly report.

We are adopting with modification the proposed amendment to add new paragraph (E) to 7 CFR 273.21(j)(3)(iii). We received no comments on this provision that the State agency shall not allow a child support deduction if the household does not report or verify child support information the State agency requires to be reported or verified.

As provided in the proposed rule and required by section 6(c)(1)(A) of the Act, households excluded from monthly reporting and retrospective budgeting in accordance with 7 CFR 273.21(b) cannot be required to report periodically, and the State agency cannot use retrospective budgeting for the excluded households. Under all options, State agencies are required to act on any changes in child support payments reported by the household that affect benefits or eligibility.

The proposed sections 273.10(d)(8)(i), (ii), (iii), and (iv) prescribing requirements for averaging and budgeting the child support deduction are not being adopted because they are unnecessary in light of the changes made in this rule. Under this final rule, § 273.10(d)(8) provides that State agencies may budget child support payments prospectively, in accordance with 7 CFR 273.10(d) (2) through (5), or retrospectively, in accordance with 7 CFR 273.21(b) and (f)(2). The payments may be budgeted prospectively or retrospectively regardless of the budgeting system used for the household's other circumstances. Section 273.21(f)(2)(iv) currently provides that the State agency shall budget deductible expenses prorated over two or more months (except medical expenses) either prospectively or retrospectively. We are adding a conforming amendment to 7 CFR 273.21(f)(2)(iv) to provide that the child support expense may be averaged and budgeted prospectively or retrospectively.

We received no comments on the proposed amendment to 7 CFR 271.2 allowing use of an adequate notice in connection with quarterly reporting, and the amendment is adopted as proposed.

With these changes, the final rule provides that State agencies shall either require households receiving a child support deduction to report a change in the legal obligation to pay child support within 10 days of the date the household becomes aware of a change or provide specified information periodically (monthly or quarterly). The proposed provision at § 273.12(a)(4)(ii) which prohibits State agencies from requiring households that report child support information periodically to report the same changes within 10 days is adopted as final. An option to use frequent recertifications in place of reporting requirements is discussed below.

We received one comment supporting the proposal regarding treatment of the deduction in households with a member who is ineligible because of alien status or failure to provide a social security number. We proposed to handle the child support deduction the same way as the shelter and dependent care expenses of these households under 7 CFR 273.11(c)(2)(iii). That is, that portion of the household's allowable child support expense which is paid by the ineligible member is divided among the household members, including the ineligible member. All but the ineligible member's share is counted as a deductible child support expense for the remaining members. Therefore, the proposed amendment to 7 CFR 273.11 is adopted as final without change.

4. Certification Periods

The proposed rule contained no requirements regarding certification periods for households eligible for the child support deduction. However, in the preamble at 59 FR 63270 we

indicated that we were not proposing certification period requirements because current rules at 7 CFR 273.10(f)(4) already address the certification period length for households that experience frequent and significant changes and those that have more predictable circumstances. The preamble reflects the expectation that households with a regular payment record and households that report their child support payments quarterly or monthly would be certified for longer periods (6 to 12 months) while households with no payment record or which have extreme monthly variations in payments would be certified for a shorter period of time.

Comments

We received three comments on certification periods. One State agency indicated that the problem of fluctuations in child support payments could be addressed by using limited certification periods for households receiving the deduction. Another State agency agreed with the statement in the preamble of the proposed rule that establishing special certification period requirements was not necessary. Another commenter asked that ''short period'' as used in the preamble be defined and asked whether a minimum certification period would be required.

Response

As indicated above in the discussion about reporting and budgeting requirements, we have reconsidered our position on the need for certification period limits in connection with the child support deduction. We agree with the commenter that assigning limited certification periods to households claiming the deduction is one way to control for fluctuations in payments. Requiring households to report changes periodically is another way.

Under this rule State agencies can choose to use frequent recertifications instead of reporting requirements to obtain information about changes in child support payments. To protect Program integrity, we believe it is necessary to set a limit on the number of months a household may participate without some examination of the amount of child support actually being paid. Therefore, this rule provides that if the State agency does not require households to report changes in child support payments periodically during the certification period, the State agency shall assign certification periods that correspond to the extent to which the household has made regular payments. Households with no history of regular child support payments who are not required to report periodically shall be assigned a certification period of no more than 3 months. Households with an established record of regular payments that are expected to continue payments of the same amount and frequency shall be certified for no more than 6 months if they are not required to report periodically. State agencies may establish their own procedures for determining what constitutes a ''record of regular child support payments.''

Households required to report periodically shall be assigned certification periods of not less than 6 months and not more than 12 months, unless a waiver has been approved.

Current regulations at 7 CFR 273.10(f)(3), (6), and (7) governing certification periods for jointly processed PA or GA cases and elderly or self-employed households are based on requirements of section 3(c) of the Food Stamp Act and shall continue to apply. We realize that under current regulations, frequent recertifications can be a burden for both households and State agencies. However, a proposed rule titled ''Simplification of Program Rules'' published January 11, 1995, would, when final, simplify the recertification process to greatly reduce the burden on households and State agencies. Households that establish a regular child support payment history will benefit by having less frequent recertifications.

Therefore, this rule amends 7 CFR 273.10(f) to add a new paragraph (9). It requires State agencies to certify households eligible for a child support deduction for no more than 3 months if they have no record of regular child support payments and are not required to submit periodic reports. Households with a record of regular payments shall be certified for no more than 6 months unless they are required to submit periodic reports.

5. Claims and Disqualification

Comments

One commenter asked whether a household would be charged with an intentional Program violation (IPV) if it claimed a deduction and then failed to report that the household member did not make the payment. The commenter also asked whether a claim against the household would be established when a deduction is granted but the household does not make the anticipated payment, and what action would be taken if it was discovered that the household had provided false verification.

Response

Current regulations at 7 CFR 273.18 provide requirements for establishing inadvertent household error or IPV claims. If a household is required to report a change in child support and does not report the change, a claim will be established in accordance with 7 CFR 273.18(c) (1) or (2). If the household is not required to report a change during the certification period, a claim is not established because of failure to report a change during that period. If the household provided false information or verification, the household could be charged with an IPV, in accordance with 7 CFR 273.16, or the State agency could pursue court action against the household member. If the individual is found to have intentionally violated Program rules, an IPV claim would be established in accordance with 7 CFR 273.18(c)(2).

6. Quality Control

In accordance with the legislative history of the child support deduction provision (House Conference Report No. 213, 103rd Congress, lst Session (1993) p. 925), the proposed rule would have added a new paragraph (ix) to 7 CFR 275.12(d)(2) to provide that any variance in a child support deduction which was the result of an unreported change subsequent to the most recent certification action shall be excluded from the error determination. As indicated in the preamble to the proposed rule at 59 FR 63270, the QC system would review the accuracy of the deduction at the most recent certification action prior to the sample month. Any unreported change in actual child support payments or obligation subsequent to the certification action would not be the basis for citing a household reporting error or a State agency error. A variance would exist if the QC reviewer determined that the State agency did not apply the proper deduction at the most recent certification action or that the household reported a change after the most recent certification action and the State agency failed to act or acted improperly on the reported change.

Comments

The five State agencies that commented on quality control supported the proposed provision.

Response

The proposed addition of paragraph (ix) to 7 CFR 275.12(d)(2) regarding QC variances in child support cases is adopted as final without change.

7. Implementation

The preamble to the proposed rule at 59 FR 63270 indicated that the child support provision of the Leland Act was effective September 1, 1994 and was required to be implemented by October 1, 1995.

Comments

Two State agencies commented on the proposed implementation requirements. One indicated that the State agency would have a problem getting changes in place by October 1995, that there was no extra money for programming, and an additional 6 months would be needed. The other State agency indicated that for States which implemented before the required date, there should be a paragraph explaining that only the overall policy intent, not the procedural steps such as CSE matching and reporting, had to be implemented at that time.

Response

In accordance with section 13971 of the Leland Act, this final rule provides that State agencies were authorized to implement the child support deduction effective September 1, 1994, but were not required to implement the provision until October 1, 1995.

In accordance with Pub. L. 104–221, the Contract with America Advancement Act of 1996, this final rule is effective December 16, 1996 and must be implemented no later than May 1, 1997. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implements the provision prior to the required implementation date. State agencies are required to adjust the cases of participating households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. State agencies which fail to implement by the required implementation date or adjust benefits as required shall provide restored benefits as appropriate.

Variances resulting from implementation of the provisions of the final rule are excluded from error analysis for 120 days from the required implementation date, in accordance with section 13951(c)(2) of the Leland Act. State agencies which implement prior to the required implementation date must notify the appropriate regional office prior to implementation that they wish the variance exclusion period to begin with actual implementation, as provided in 7 CFR 275.12(d)(2)(vii)(A). In the absence of such notification, the exclusionary period will begin with the required implementation date.

List of Subjects

7 CFR Part 271

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

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

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

Accordingly, 7 CFR parts 271, 272, 273, and 275 are amended as follows:

1. The authority citation of parts 271, 272, 273, and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

2. In § 271.2, the definition of ''Adequate notice'' is amended by removing the words ''in a Monthly Reporting and Retrospective Budgeting system'' and adding in their place the words ''in a periodic reporting system such as monthly reporting or quarterly reporting.''

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(148) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(148) *Amendment No. 362.* The provision of Section 13921 of Public Law 103–66 establishing a child support deduction was effective September 1, 1994, and was required to be implemented no later than October 1, 1995. The provisions of Amendment No. 362 are effective December 16, 1996 and must be implemented no later than May 1, 1997. State agencies shall implement the provisions no later than the required implementation date. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implemented the provision prior to the required implementation date, whichever is earlier. State agencies are required to adjust the cases of participating households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. State agencies which fail to implement or adjust cases by the required implementation date shall provide restored benefits as appropriate. For quality control purposes, any variances resulting from implementation of the provisions are excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii) and 7 U.S.C. 2025(c)(3)(A). State agencies which implement prior to the required implementation date must notify the appropriate regional office prior to implementation that they wish the variance exclusion period to begin with actual implementation, as provided in 7 CFR 275.12(d)(2)(vii)(A). Absent such notification, the exclusionary period will begin with the required implementation date.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.2:

a. a new paragraph (f)(1)(xiii) is added and

b. two new sentences are added at the end of paragraph (f)(8)(i)(A).

The additions read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(xiii) *Legal obligation and actual child support payments.* The State agency shall obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments. State agencies may and are strongly encouraged to obtain information regarding a household member's child support obligation and payments from Child Support Enforcement (CSE) automated data files. The State agency shall give the household an opportunity to resolve any discrepancy between household

verification and CSE records in accordance with paragraph (f)(9) of this section.

* * * * *

(8) *Verification subsequent to initial certification.* (i) *Recertification.* (A) * * * The State agency shall require a household eligible for the child support deduction to verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of legally obligated child support a household member pays to a nonhousehold member. The State agency shall verify reportedly unchanged child support information only if the information is incomplete, inaccurate, inconsistent or outdated.

* * * * *

4(a). In § 273.9, paragraphs (d)(7) and (d)(8) are redesignated as paragraphs (d)(8) through (d)(9) respectively and a new paragraph (d)(7) is added to read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) *Income deductions.* * * *

(7) *Child support deduction.* Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency shall allow a deduction for amounts paid toward arrearages. Alimony payments made to or for a nonhousehold member shall not be included in the child support deduction.

* * * * *

5. In § 273.10:

a. The introductory text of paragraph (d) is amended by adding the words ''child support'' between the words ''shelter,'' and ''and medical''.

b. A new paragraph (d)(8) is added.

c. Paragraph (e)(1)(i)(E) is amended by removing the reference ''(e)(1)(i)(F)'' and adding in its place a reference to ''(e)(1)(i)(G)''.

d. Paragraphs (e)(1)(i)(F) and (e)(1)(i)(G) are redesignated as paragraphs (e)(1)(i)(G) and (e)(1)(i)(H) respectively and a new paragraph (e)(1)(i)(F) is added.

e. Newly redesignated paragraph (e)(1)(i)(G) is amended by removing the reference to ''(e)(1)(i)(G)'' and adding in its place a reference to ''(e)(1)(i)(H)''.

f. A new paragraph (f)(9) is added.

The additions and revisions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(8) *Child support deduction.* State agencies may budget child support payments prospectively, in accordance with paragraphs (d)(2) through (d)(5) of this section, or retrospectively, in accordance with § 273.21(b) and § 273.21(f)(2), regardless of the budgeting system used for the household's other circumstances.

(e) *Calculating net income and benefit levels.*

(1) *Net monthly income.*

(i) * * *

(F) Subtract allowable monthly child support payments in accordance with § 273.9(d)(7).

* * * * *

(f) *Certification periods.* * * *

(9) Households eligible for a child support deduction that have no record of regular child support payments or of child support arrearages and are not required to report child support payment information required by the State agency periodically (monthly or quarterly) during the certification period shall be certified for no more than 3 months. Households with a record of regular child support and arrearage payments that are not required to report payment information periodically during the certification period shall be certified for no more than 6 months. These requirements do not apply to households whose certification periods are established in accordance with paragraphs (f)(3), (f)(6), or (f)(7) of this section. Households required to report monthly or quarterly shall be assigned certification periods in accordance with paragraph (f)(8) of this section.

* * * * *

§ 273.11 [Amended]

6. In § 273.11,

a. Paragraph (c)(1)(i) is amended by adding the words ''child support,'' after the words ''dependent care,''.

b. Paragraph (c)(2)(iii) is amended by adding the words ''child support payment,'' after the word ''allowable'' in the second sentence and after the word ''deductible'' in the third sentence.

7. In § 273.12:

a. A new paragraph (a)(1)(vi) is added.

b. Paragraph (a)(4) is redesignated as paragraph (a)(5) and a new paragraph (a)(4) is added.

c. The heading of paragraph (b), the introductory text of paragraph (b)(1), and paragraph (b)(2) are revised.

The revisions and additions read as follows:

§ 273.12 Reporting changes.

(a) *Household responsibility to report.*

(1) * * *

(vi) Changes in the legal obligation to pay child support.

* * * * *

(4) The State agency may require a household that is eligible to receive a child support deduction in accordance with § 273.9(d)(7) to report information required by the State agency regarding child support on a change report, a monthly report, or quarterly report. The State agency shall process the reports in accordance with procedures for the systems used in budgeting the household's income and deductions. The following requirements apply to quarterly reports:

(i) The State agency shall provide the household a reasonable period after the end of the last month covered by the report in which to return the report. If the household does not file the report by the due date or files an incomplete report, the State agency shall provide the household with a reminder notice advising the household that it has 10 days from the date the State agency mails the notice to file a complete report. If the household does not file a complete report by the extended filing date as specified in the reminder notice, the State agency shall determine the household's eligibility and benefits without consideration of the child support deduction. The State agency shall not terminate the benefits of a household for failure to submit a quarterly report unless the household is otherwise ineligible. The State agency shall send the household an adequate notice as defined in § 271.2 of this chapter if the household fails to submit a complete report or if the information contained on a complete report results in a reduction or termination of benefits. The quarterly report shall meet the requirements specified in paragraph (b) of this section. The State agency may combine the content of the reminder notice and the adequate notice as long as the notice meets the requirements of the individual notices.

(ii) The quarterly report form, if required, shall be the sole reporting requirement for reporting child support payments during the certification period. Households excluded from monthly reporting as specified in § 273.21(b) and households required to submit monthly reports shall not be required to submit quarterly reports.

* * * * *

(b) *Report forms.* (1) The State agency shall provide the household with a form for reporting the changes required in paragraph (a)(1) of this section to be reported within 10 days and shall pay the postage for return of the form. The

change report form shall, at a minimum, include the following:

* * * * *

(2) A quarterly report form for reporting changes in the child support obligation and payments shall be written in clear, simple language and meet the bilingual requirements described in § 272.4(b) of this chapter. The report shall meet the requirements of § 273.21(h)(2)(iii) through (h)(2)(vii).

* * * * *

8. In § 273.21:

a. Paragraph (f)(2)(iv) is amended by adding a sentence at the end.

b. Paragraph (j)(3)(iii) is amended by removing the semicolon at the end of paragraphs (j)(3)(iii)(A) and (j)(3)(iii)(B) and adding a period in its place and by adding a new paragraph (j)(3)(iii)(E).

The additions read as follows:

§ 273.21 Monthly reporting and retrospective budgeting (MRRB).

* * * * *

(f) *Calculating allotments for households following the beginning months.* * * *

(2) *Income and deductions.* * * *

(iv) * * * The State agency may average the child support expense and budget it prospectively or retrospectively.

* * * * *

(j) *State agency action on reports.* * * *

(3) *Incomplete filing.* * * *

(iii) * * *

(E) If the household does not report or verify changes in child support, the State agency shall not allow a child support deduction.

* * * * *

Part 275—PERFORMANCE REPORTING SYSTEM

9. In § 275.12, a new paragraph (d)(2)(ix) is added to read as follows:

§ 275.12 Review of active cases.

* * * * *

(d) *Variance identification.* * * *

(2) *Variances excluded from error analysis.* * * *

(ix) Any variance in a child support deduction which was the result of an unreported change subsequent to the most recent certification action shall be excluded from the error determination.

* * * * *

Dated: September 27, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–26068 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–30–U

7 CFR Parts 272 and 273

[Amendment No. 374]

RIN 0584–AB93

Food Stamp Program: Treatment of Educational and Training Assistance

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: On November 1, 1993, the Department published a proposed rule regarding the eligibility of students for the Food Stamp Program and the treatment of educational and training assistance for food stamp purposes. Public comments were solicited and considered. This rule finalizes the provisions regarding educational and training assistance. The provisions regarding student eligibility were published final in a separate rule.

EFFECTIVE DATE: This rule is effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone: (703) 305–2520.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

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

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Under Secretary for Food, Nutrition, and Consumer Services has certified that this action does not have a significant economic impact on a substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Potentially eligible and currently participating households are affected to the extent that they contain members who are eligible students and who receive assistance excluded from income and resources under this action. Some currently participating student households could realize an increase in benefits as a result of this action.

Executive Order 12778

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

The Department received one comment concerning Executive Order 12778. One commenter said that administrative procedures do not have to be exhausted before judicial challenge and that the Department should correct this misstatement and avoid making such statements in future rulemakings. While we believe that it would have been fully within the Secretary's discretionary authority, as granted in section 4(c) of the Food Stamp Act (7 U.S.C. § 2013(c)), to establish an exhaustion requirement, this matter has now been specifically addressed by statute. Section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, P. L. 103–354, requires persons to exhaust all administrative appeal procedures established by the Secretary or required by law before the person may bring an action in a court of competent jurisdiction against the Secretary, the Department or an agency, office, officer, or employee of the Department.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject

to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (P.L. 104–13).

This rule removes 7 CFR 273.9(c)(10)(xi) which contains verification requirements for educational assistance, and instructs State agencies to follow the verification requirements already outlined in 273.2(f).

This rule refers to but does not affect the current information collection requirements for 7 CFR 273.2(f). State welfare agencies must verify certain information which affects household eligibility and benefits. Applicant households are required to provide the necessary information to the State agency. The reporting and recordkeeping burden associated with the application, certification, and continued eligibility of food stamp applicants has been approved by the Office of Management and Budget (OMB) under OMB No. 0584–0064. OMB approval includes the burden associated with verification of information provided on the food stamp application.

Background

On November 1, 1993, the Department proposed procedures to implement amendments to the Food Stamp Act of 1977, as amended, (7 U.S.C. 2011 *et seq.*) (Food Stamp Act), as set forth in Sections 1715 and 1727 of Pub. L. 101–624, the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (Mickey Leland Act), enacted November 28, 1990, and Section 903 of Title IX of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (1991 Technical Amendments), enacted December 13, 1991. Section 1715 of the Mickey Leland Act, as amended by Section 903 of the 1991 Technical Amendments, establishes procedures for determining an income exclusion for certain educational assistance received by eligible student households. Section 1727 of the Mickey Leland Act amended the Food Stamp Act to grant eligibility for participation in the Food Stamp Program (Program) to certain college students currently considered ineligible to participate.

Procedures were also proposed for implementing amendments to the Higher Education Act of 1965 as set forth in Sections 471 and 1345 of Pub. L. 102–325, the Higher Education Amendments of 1992, enacted July 23, 1992. Those sections prohibit certain Federal educational assistance from being considered as income and resources for food stamp purposes.

Lastly, procedures were proposed for implementing a provision of Pub. L. 101–392, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Perkins Act), enacted September 25, 1990, which prohibits counting certain educational assistance received by students from a program funded by the Perkins Act as income or resources when determining the eligibility and benefits of student households.

The Department accepted comments on this rulemaking through January 2, 1994. Comments were received from eight State agencies, one public interest group, and one advocate. The comments concerning educational income are discussed below. Comments not related to the proposed changes are not addressed.

The proposed rule contained provisions on student eligibility and the treatment of educational and training assistance. This rule finalizes only the provisions concerning educational and training assistance. The provisions regarding student eligibility have been finalized in a separate rule.

A full explanation of the provisions in this final rule was contained in the preamble of the proposed rule (58 FR 58463). The reader should refer to the preamble of that rule for a full understanding of the provisions of this final rule.

Since the proposed rule was published, the Department has undertaken a complete review of all the Food Stamp regulations in response to the President's Regulatory Reform Initiative. The Department has considered ways to reform the Program regulations in order to remove overly prescriptive provisions, eliminate outdated and redundant regulatory requirements and increase State flexibility. Several of the decisions the Department has made on this final rule have been made with the Regulatory Reform Initiative in mind and are noted as such in the preamble.

Resources

Resource Exclusions

The November 1, 1993, regulation proposed to revise 7 CFR 273.8(e)(11)(xi) to conform to provisions in the Higher Education Act and the Perkins Act. In the interim, 7 CFR 273.8(e)(11)(xi) has been redesignated as 273.8(e)(11)(x). These two laws exclude resources for student assistance funded in whole or in part under Title IV and Part E of Title XIII of the Higher Education Act and the Perkins Act.

The Department received three comments concerning this provision. Two supported it. One suggested that a definition of Part E of Title XIII of the Higher Education Act be included in the preamble. Part E of Title XIII of the Higher Education Act refers to the Tribal Development Student Assistance Revolving Loan Program.

During the Regulatory Reform Initiative, the Department concluded that it is not necessary to list all Federal statutes that exclude resources as the list is constantly changing and is quickly outdated. The Department routinely sends out policy memos updating the list of Federal statutes which provide for such exclusions. The Department believes that the regulations at 7 CFR 273.8(e)(11), which exclude resources that are excluded for food stamp purposes by express provision of Federal statute, provide adequate guidance. Therefore, the Department is not adopting the proposed revisions. Instead, the Department is removing 7 CFR 273.8(e)(11)(x), since it is obsolete, and is instructing State agencies to abide by 7 CFR 273.8(e)(11) and policy memos listing the Federal statutes which exclude resources for food stamp purposes.

Earned Income

Work Study and Fellowships as Earned Income

The November 1, 1993, regulation proposed to add a new paragraph, 7 CFR 273.9(b)(1)(vi) and to make a conforming amendment to 7 CFR 273.9(b)(2)(iv) which would define income from work study or a fellowship with a work requirement as earned income. As such, it would be subject to the provisions of 7 CFR 273.9(d)(2), which provide for a 20 percent earned income deduction. The Department received three comments, all in support of the provision.

It has come to the Department's attention that there are also assistantships which have a work requirement, such as working as a lab assistant or teacher's aide. To be consistent with the treatment of income from work study and fellowships with a work requirement, the Department is adopting the proposed change at 7 CFR 273.9(b)(1)(vi) with a modification. It will now state that earned income includes educational assistance which has a work requirement (such as work study, an assistantship or fellowship with a work requirement) in excess of the amount excluded under 7 CFR 273.9(c)(3). The Department is making a conforming amendment at 7 CFR 273.9(b)(2)(iv), the definition of unearned income, adding a more general phrase, ''other than educational assistance with a work requirement,'' in order to capture work study, fellowships

and assistantships with a work requirement.

The November 1, 1993, rule proposed to include at 7 CFR 273.9(c)(3) a provision that the 20 percent earned income deduction required by paragraph (d)(2) of this section shall be applied to income from work study and income from a fellowship with a work requirement after allowable exclusions are made pursuant to paragraph (c)(3) of this section. This is already covered by 7 CFR 273.9(b)(1)(vi), as amended by this rule, and 7 CFR 273.9(d)(2). To include a similar provision at 7 CFR 273.9(c)(3) would be redundant. Therefore, the Department is not adopting the proposed addition to 7 CFR 273.9(c)(3).

Allowable Expenses

Mandatory School Fees

The November 1, 1993, rule proposed to expand the definition of mandatory school fees to include the costs of rental or purchase of equipment, materials, and supplies related to the pursuit of the course of study involved. Two commenters supported this change. This provision is specifically provided for in the Mickey Leland Act. The provision is being adopted as final at 7 CFR 273.9(c)(3).

Miscellaneous Personal and Normal Living Expenses

The November 1, 1993, rule proposed at 7 CFR 273.9(c)(3) to allow an educational income exclusion based on earmarking or use for miscellaneous personal expenses.

The proposed rule used the definition of miscellaneous personal expenses as set forth in Section 5(d) of the Food Stamp Act: expenses (other than normal living expenses) of the student incidental to attending such school, institution or program. The Department interpreted this definition of miscellaneous personal expenses as meaning things such as subscriptions to educational publications or dues for a professional association. The Department defined normal living expenses as food, rent, board, clothes, laundry, haircuts and personal hygiene items.

The Department received three comments regarding this proposal. In general, the commenters were opposed to the revised definitions of miscellaneous personal and normal living expenses. One commenter suggested that all items other than room and board should be considered miscellaneous personal expenses. Another commenter suggested that since the Perkins Act defines miscellaneous personal expenses as ''other than room and board'', at least for assistance provided under the Perkins Act, miscellaneous personal expenses should be defined as such.

The Department believes that using the same definitions for educational income received from various sources will simplify the treatment of educational assistance. The Food Stamp Act offers the Department some discretion in this area. Therefore, the Department has decided to adopt one of the commenter's suggestions and revise its definition of miscellaneous personal expenses and normal living expenses. In this final rule at 7 CFR 273.9(c)(3), miscellaneous personal expenses will include all personal expenses other than room and board. Normal living expenses will include only room and board.

Handling of Normal Living Expenses

As mentioned above, normal living expenses, defined as room and board, are not excludable. The November 1, 1993, rule proposed at 7 CFR 273.9(c)(3) that amounts earmarked as miscellaneous personal expenses which were obviously intended for normal living expenses shall not be excluded. It has come to the Department's attention that the grantor often cannot delineate any further sums earmarked for miscellaneous personal expenses. If delineation is not possible, the entire amount earmarked for miscellaneous personal expenses is excludable. Therefore, the Department is not adopting the proposed change. Instead the Department is instructing States to refer to 273.9(c)(3), as revised by this rule, and exclude all amounts earmarked for miscellaneous personal expenses.

Dependent Care

The November 1, 1993, rule proposed at 7 CFR 273.9(c)(3) to allow an exclusion from educational assistance for amounts earmarked or used for dependent care. The Department received two comments in support of this provision. It is being adopted final at 7 CFR 273.9(c)(3).

The rule also proposed to amend 7 CFR 273.10(d)(1)(i) to prohibit amounts excluded from educational income for dependent care costs pursuant to 7 CFR 273.9(c)(3) from also being deducted from income under the current provision at 7 CFR 273.9(d)(4). Two commenters supported this provision. It has come to the Department's attention that there are expenses other than dependent care which should be subject to the same restrictions. Therefore, this final rule amends 7 CFR 273.10(d)(1)(i), adding a more general phrase providing that any expense, in whole or part, covered by educational income which has been excluded pursuant to the provisions of 7 CFR 273.9(c)(3) shall not be deductible.

One commenter suggested that the Department clarify that there is no maximum amount of dependent care that can be excluded. The Department intended that there should be no limit as to the amount of dependent care expenses that may be excluded from educational assistance based on earmarking. However, if a student pays more for dependent care than is earmarked, the additional amount may be deducted in accordance with 7 CFR 273.9(d)(4). This additional amount is then subject to 7 CFR 273.9(d)(4) which provides for a maximum limit per dependent. The final rule, at 7 CFR 273.9(c)(3), provides that dependent care costs which exceed the amount excludable from income shall be deducted from income in accordance with paragraph 7 CFR 273.9(d)(4) and be subject to a cap.

In the preamble of the proposed rule, the Department stated its intention to include a provision that would prohibit amounts excluded from educational assistance for dependent care from also being excluded under the general reimbursement provision at 7 CFR 273.9(c)(5)(i)(C). No comments opposed this provision. However, this provision was inadvertently left out of the proposed regulation itself. Therefore, this rule, at 7 CFR 273.9(c)(3) includes a provision stating that amounts excluded for dependent care costs under the provisions of 7 CFR 273.9(c)(3) shall not be excluded under the general exclusion provisions of paragraph 7 CFR 273.9(c)(5)(i)(C).

Exclusions From Income

Types of Schools

The November 1, 1993, rule proposed at 7 CFR 273.9(c)(3) two additional types of educational programs which qualify a student for income exclusions based on allowable educational expenses: (1) vocational and technical schools, and (2) any program in which students would receive a high school diploma or its equivalent.

The Department received three comments supporting the proposed revision. Accordingly, the language is being adopted as final without change at 7 CFR 273.9(c)(3).

In the preamble of the proposed rule, the Department stated its intention to retain the definition of an institution of post-secondary education. However, this definition was inadvertantly left out of the the proposed regulations itself.

Therefore, this final rule, at 7 CFR 273.9(c)(3), retains the definition of post-secondary education currently in the regulations.

Order of Income Exclusions

The November 1, 1993, rule proposed to totally revise 7 CFR 273.9(c)(3) to include a three-part procedure for excluding educational assistance. The first step was to totally exclude all educational income excluded by other Federal laws. The second step was to exclude allowable educational expenses based on earmarking. The third step was to exclude allowable educational expenses the student could verify were used for excludable expenses. If earned educational income such as work study were involved, the expenses would be excluded from unearned educational income first and the remainder of the expenses would be excluded from earned educational income.

The Department received nine comments on this proposal. Three supported the income exclusion process as written. Six opposed the process for various reasons. For example, they found the process unnecessarily complex, unjustifiably error-prone, and difficult to automate. All six suggested alternative ways of determining the amount of countable student assistance.

In light of the alternative processes suggested by the commenters and within the context of the Regulatory Reform Initiative, the Department has decided to give States the flexibility to design procedures for excluding student assistance that are more appropriate to their specific circumstances. Therefore, the Department is not adopting the proposed provision on the *process* that States must follow to exclude income, but is amending 7 CFR 273.9(c)(3) to include provisions on what shall be excluded, as explained in further detail below.

Amounts Excluded by Other Federal Laws

The November 1, 1993, rule proposed to amend 7 CFR 273.9(c)(3) to include a provision that States shall first exclude all educational income specifically excluded from consideration as income by other Federal statutes. The regulations at 7 CFR 273.9(c)(10) already provide for this. The Department has decided that to include a similar provision in 7 CFR 273.9(c)(3) would be redundant. Therefore, the Department is not adopting the proposed provision and is instead instructing States to abide by 7 CFR 273.9(c)(10).

Amounts Earmarked for Allowable Expenses

The November 1, 1993, rule proposed to amend 7 CFR 273.9(c)(3) to include a provision that after excluding amounts excluded by other Federal law, States shall then exclude educational assistance identified (earmarked) by the institution, program or other grantor for the specific costs of tuition, mandatory school fees (including the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved), books, supplies, dependent care, transportation, and miscellaneous personal expenses (other than normal living expenses).

The Department received two comments regarding earmarking, each suggesting different ways States could determine what constitutes earmarking. The comments illustrate that each institution, program or grantor earmarks student assistance differently. Since the Food Stamp Act does not specify how this assistance is to be earmarked, the Department has decided to give States the flexibility to decide what constitutes earmarking.

One commenter wanted to verify that the institution, school, program, or grantor is able to earmark allowable expenses. It was always the Department's intention that this be the case as it is clearly stated in the Food Stamp Act that amounts identified by the school, institution, program, or other grantor as allowable expenses shall be excluded.

The Department received four comments disagreeing with the proposal to allow multiple exclusions based on earmarking. For example, when a student receives two grants earmarked for tuition costs, both amounts earmarked for tuition shall be excluded, even though the total may be greater than the amount of the tuition. However, Section 5(d) of the Food Stamp Act, as amended, states that amounts made available as an allowance (earmarked) for tuition, mandatory fees, books, supplies, transportation and other miscellaneous personal expenses, must be excluded regardless of whether or not the grants were actually used to pay all or part of these expenses. The Department does not have the discretion to adopt these comments.

The proposed provision to exclude earmarked amounts is being adopted as final at 7 CFR 273.9(c)(3) with a modification. The Department is not adopting the provision that states shall exclude these amounts first.

Exclusions Based on Use

The November 1, 1993, rule proposed to allow an exclusion of educational assistance if the student could show it was used for allowable expenses, or if the amount used was in excess of earmarked amounts. The Department received one comment disagreeing with the proposal to allow an exclusion based on use if a grant has already been earmarked for the same expense. However, the Food Stamp Act of 1977, as amended, specifically states that an exclusion shall be granted for allowable expenses to the extent that they do not exceed the amount used for or made available for allowable expenses.

This final rule at 7 CFR 273.9(c)(3) states that amounts used for the allowable expenses of tuition, mandatory fees (including the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved), books, supplies, dependent care, transportation, or miscellaneous personal expenses (other than normal living expenses which are room and board) of the student incidental to attending a school, institution or program shall be excluded.

Additional Educational Assistance Issues

Income Averaging

The November 1, 1993, rule proposed in 7 CFR 273.9(c)(3) to include a provision on income averaging. However, 7 CFR 273.10(c)(3)(iii) already addresses income averaging. The Department has decided that it is redundant to address income averaging in two places. Therefore, in this final rule, this provision is incorporated into the educational proration provision at 7 CFR 273.10(c)(3)(iii).

The November 1, 1993, rule proposed that the first month educational income would be counted is the month in which it is received, although it would still be prorated over the period it is intended to cover. One State agency supported prorating the income over the period it is intended to cover, but said that not counting it until the student receives it would require additional reporting by the student. The State agency suggested budgeting student income when it has been approved rather than when it is received.

The Department disagrees with the recommendation of the commenter because it would result in students having income counted before it is received. However, the Department would like to avoid imposing burdensome requirements on households or eligibility workers.

Therefore, the Department has decided to amend 7 CFR 273.10(c)(3)(iii) to give States the option of counting the income either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it would still be prorated over the period it is intended to cover.

The November 1, 1993, rule also proposed at 7 CFR 273.9(c)(3) that when work study income (earned educational income) is received monthly and costs of attendance are incurred on a less frequent basis, the State agency would anticipate the work study income for the appropriate quarter, semester, or year; exclude the allowable costs; and prorate the remainder over the quarter, semester, or year. One commenter supported treating work study income the same way as unearned educational assistance and prorating it over the period it is intended to cover.

One commenter objected to this proposal because eligibility workers are not in the position to anticipate anything beyond the amount verified by the institution. This same commenter suggested that the regulations should mandate the use of the verified amount.

The Department believes that, in the interest of consistency, work study income should be treated the same way as unearned educational income. States may count it in the month it is received, or count it the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

The final rule amends 7 CFR 273.(10)(c)(3)(iii) to provide that earned and unearned educational income, after allowable exclusions, shall be averaged over the period it is intended to cover. The first month that educational income shall be counted is either the month in which the income or the first installment payment is received, or the month in which the income or first installment payment is anticipated to be received, although it is still prorated over the period it is intended to cover.

Loans

The November 1, 1993, rule proposed to revise 7 CFR 273.9(c)(4) so that educational loans on which repayment is deferred shall be excluded pursuant to the provisions of 7 CFR 273.9(c)(3) and that a loan on which repayment must begin within 60 days after receipt would not be considered a deferred repayment loan.

One commenter pointed out that this provision was not discussed in the preamble. This provision was included in the proposed rule for comment because it had previously come up as a policy inquiry. Repayment for most types of Federal loans for education is deferred until after the student graduates or until the student drops out of school. On most non-deferred repayment loans, repayment must begin within 60 days of receipt and is therefore, not excludable. The Department is adopting the proposed provision with a modification at 7 CFR 273.9(c)(4). Reference to 7 CFR 273.9(c)(10)(xi) will no longer be included because this final rule deletes this section.

Reimbursements

The November 1, 1993, rule proposed at 7 CFR 273.9(c)(5) that educational assistance provided for normal living expenses could not be excluded under the reimbursement provision and that all other reimbursements or allowances for educational assistance would be handled under the educational income exclusion section.

The Department realizes that it is not necessary to list each type of educational assistance. Therefore, in this rule at 7 CFR 273.9(c)(5)(ii)(B), the list of educational income sources in the first sentence has been removed and a general reference to educational assistance has been added. Also, for the purpose of clarity, the definition of normal living expenses (room and board) has been added.

Retrospective Budgeting

One commenter requested that the regulations allow State agencies to retrospectively budget work study and fellowships as well as other educational assistance. A rule titled ''Miscellaneous Provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 and Earned Income Tax Credit Amendment'' published August 29, 1994, changed the regulations to allow educational income (nonexcluded scholarships, deferred educational loans, and other educational grants) to be budgeted either prospectively or retrospectively. However, the Department agrees that, in the interest of consistency, earned educational income should be treated the same as unearned educational income. Accordingly, this rule revises 7 CFR 273.21(f)(2)(iii) so that earned and unearned educational income is required to be prorated over the period it is intended to cover in accordance with 7 CFR 273.10(c)(3)(iii) and it shall be budgeted either prospectively or retrospectively.

Verification

The November 1, 1993, rule proposed to include verification requirements for student income at 7 CFR 273.9(c)(3). The Department received six comments concerning this proposal. Two supported these provisions. Three suggested different procedures for verifying student income. One suggested the verification requirements be placed in one section of the regulations. The Department agrees with this commenter. Verification requirements are already outlined in 7 CFR 273.2(f). To include separate verification requirements for student income would be redundant. Therefore, the Department has decided not to adopt the verification procedures as proposed. Instead, it is instructing States to follow the verification requirements already outlined in 7 CFR 273.2(f).

Technical Changes

The reference to Section 1345(c) at 7 CFR 273.8 should have been 1343(c). The Department is correcting the reference in this rule.

Implementation

State welfare agencies have been instructed through agency directive to implement the provisions of the following laws as of the statutory effective dates without waiting for formal regulations: the Higher Education Act Amendments of 1986, as amended in 1987, for the 1988–89 school year; the Perkins Act on July 1, 1991; the Mickey Leland Act (as amended by the 1991 Technical Amendments to the Food Stamp Act) on February 1, 1992, and the exclusions contained in the Higher Education Act Amendments of 1992 for the Tribal Development Student Assistance Revolving Loan Program on October 1, 1992, and for Title IV and BIA student assistance on July 1, 1993.

One commenter asked if the Title IV and BIA exclusion applies to school periods beginning after July 1, 1993, or to income received after that date. It applies to income received for school periods beginning on or after July 1, 1993. The law specifically provides that the exclusion shall apply to award years beginning after July 1, 1993.

Pursuant to Public Law 104–121, the Contract with America Advancement Act of 1996, this final rule is effective December 16, 1996; State agencies must implement it no later than March 1, 1997.

State agencies will be required to adjust the cases of ongoing households at the next recertification, at household request, or when the case is next

reviewed, whichever comes first. If implementation of the above Acts or this rule is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act.

The preamble to the proposed rule provided that any variance resulting from implementation of the provision of the subsequent final rule would be excluded from error analysis for 90 days from the specified implementation dates of such final rule.

One commenter pointed out that the grace period should be 120 days. Section 13951 of the Mickey Leland Childhood Hunger Relief Act, P.L. 102–66, enacted August 10, 1993, excludes from the payment error rate any errors resulting in the application of new procedures for 120 days from date of publication. Accordingly, variances resulting form implementation of the provisions of the final rule are excluded from error analysis for 120 days from March 1, 1997.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(149) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(149) *Amendment No. 374.* The Higher Education Act Amendments of 1986, as amended in 1987, were effective and required to be implemented for the 1988–89 school year; the Perkins Act was effective and required to be implemented on July 1, 1991; the Mickey Leland Act (as amended by the 1991 Technical Amendments to the Food Stamp Act) was effective and required to be implemented on February 1, 1992, and the exclusions contained in the Higher Education Act Amendments of 1992 for the Tribal Development Student Assistance Revolving Loan Program were effective and required to be implemented on October 1, 1992, and for Title IV and BIA student assistance on July 1, 1993. The provisions of Amendment No. 374 are effective December 16, 1996 and must be implemented by March 1, 1997. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. If implementation of the acts referenced in this paragraph or this amendment is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act. Any variance resulting from implementation of this amendment shall be excluded from error analysis for 120 days from March 1, 1997.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.8, paragraph (e)(11)(x) is removed.

4. In § 273.9:

a. A new paragraph (b)(1)(vi) is added;

b. paragraph (b)(2)(iv) is amended by removing ''fellowships'' and adding the phrase '', other than educational assistance with a work requirement,'' after the word ''like'';

c. paragraph (c)(3) is revised;

d. paragraph (c)(4) is amended by removing all text appearing after the first sentence and adding two new sentences to the end of the paragraph.

e. paragraph (c)(5)(i) is amended by removing paragraph (c)(5)(i)(D) and redesignating paragraphs (c)(5)(i)(E), (c)(5)(i)(F) and (c)(5)(i)(G) as paragraphs (c)(5)(i)(D), (c)(5)(i)(E) and (c)(5)(i)(F), respectively;

f. paragraph (c)(5)(ii) is amended by revising paragraph (c)(5)(ii)(B) and by removing paragraph (c)(5)(ii)(C);

g. paragraph (c)(10)(xi) is removed.

The revisions and additions read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definition of income.* * * *

(1) * * *

(vi) Educational assistance which has a work requirement (such as work study, an assistantship or fellowship with a work requirement) in excess of the amount excluded under § 273.9(c)(3).

* * * * *

(c) *Income exclusions.* * * *

(3)(i) Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like.

(ii) To be excluded, educational assistance referred to in paragraph (c)(3)(i) must be:

(A) Awarded to a household member enrolled at a:

(*1*) Recognized institution of post-secondary education (meaning any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in the State in which the institution is located, provided that the institution is legally authorized or recognized by the State to provide an educational program beyond secondary education in the State or provides a program of training to prepare students for gainful employment, including correspondence schools at that level),

(*2*) School for the handicapped,

(*3*) Vocational education program,

(*4*) Vocational or technical school,

(*5*) Program that provides for obtaining a secondary school diploma or the equivalent;

(B) Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

(*1*) Tuition,

(*2*) Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved,

(*3*) Books,

(*4*) Supplies,

(*5*) Transportation,

(*6*) Miscellaneous personal expenses, other than normal living expenses, of the student incidental to attending a school, institution or program,

(*7*) Dependent care,

(*8*) Origination fees and insurance premiums on educational loans,

(*9*) Normal living expenses which are room and board are not excludable.

(*10*) Amounts excluded for dependent care costs shall not also be excluded under the general exclusion provisions of paragraph § 273.9(c)(5)(i)(C). Dependent care costs which exceed the amount excludable from income shall be deducted from income in accordance with paragraph § 273.9(d)(4) and be subject to a cap.

(iii) Exclusions based on use pursuant to paragraph (c)(3)(ii)(B) must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the

exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expense are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income to the extent possible. If the unearned educational income is not enough to cover the expense, the remainder of the allowable expense shall be excluded from earned educational income.

(iv) An individual's total educational income exclusions granted under the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section cannot exceed that individual's total educational income which was subject to the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section.

(4) * * * Educational loans on which repayment is deferred shall be excluded pursuant to the provisions of § 273.9(c)(3)(i). A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

(5) * * *

(ii) * * *

(B) No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this provision.

* * * * *

5. In § 273.10, paragraph (c)(3)(iii) is revised and a new sentence is added to the beginning of paragraph (d)(1)(i). The addition and revision read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(c) *Determining income.* * * *

(3) *Income averaging.* * * *

(iii) Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

(d) *Determining deductions.* * * *

(1) *Disallowed expenses.*

(i) Any expense, in whole or part, covered by educational income which has been excluded pursuant to the provisions of § 273.9(c)(3) shall not be deductible. * * *

* * * * *

6. In § 273.21, the first sentence in paragraph (f)(2)(iii) is revised to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * *

(f) *Calculating allotments for households following the beginning months.* * * *

(2) *Income and deductions.* * * *

(iii) Earned and unearned educational income shall be prorated over the period it is intended to cover in accordance with § 273.10(c)(3)(iii), and it shall be budgeted either prospectively or retrospectively. * * *

* * * * *

Dated: September 26, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–26070 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–30–U

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7 CFR Parts 272 and 273

[Amendment No. 365]

RIN 0584–AB98

Food Stamp Program: Monthly Reporting on Reservations Provision of the Food Stamp Program Improvements Act of 1994

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking amends Food Stamp Program regulations to establish procedures for implementing the restrictions concerning use of monthly reporting for households residing on reservations contained in the Food Stamp Program Improvements Act of 1994. It finalizes provisions of a proposed rule published in the Federal Register on June 6, 1995.

DATES: This rule is effective December 16, 1996 and must be implemented no later than the first day of the first month after February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2520, or over the internet at margaret__batko@FCS.USDA.GOV.

SUPPLEMENTARY INFORMATION

Executive Order 12866

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

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rulemaking and related Notice(s) to 7 CFR 3105, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rulemaking has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Consumer Service (FCS), has certified that this rulemaking would not have a significant economic impact on substantial number of small entities. The primary impact of the procedures in this rulemaking would be on FCS Regional Offices, State governments, and individuals who might apply for benefits in State agencies that use monthly reporting procedures. To the extent that county or other local governments assist in the administration of the Food Stamp Program, they would also be affected.

Executive Order 12778

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

liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Paperwork Reduction Act

Information collection burdens in 7 CFR 273.21 governing reporting and recordkeeping requirements for monthly reporting and retrospective budgeting were approved by the Office of Management and Budget (OMB) under OMB No. 0584–0064. The provisions contained in this final rule change the content of certain notices to households, but would not impose any additional or reduce any current reporting and recordkeeping burden requirements. Since this final rule is placing into effect through formal rulemaking an information collection burden already approved, this rule has no effect on the existing burden estimates. FCS will publish a notice in the Federal Register explaining in detail why the information collection burden approved under OMB No. 0584–0064 is not affected and providing a 60-day period for public comment on the existing burden estimates. As required by the Paperwork Reduction Act of 1995, FCS will submit an Information Collection Request to OMB for extension of OMB No. 0584–0064 addressing any comments received.

Background

Section 1723 of the Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, 104 Stat. 3359, November 28, 1990) amended Section 6(c)(1)(A)(i) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2015(c)(1)(A)(i), to exempt households residing on reservations from monthly reporting and retrospective budgeting (MRRB) effective February 1, 1992. The Department announced the regulatory adoption of the requirements of Section 1723 in a final rule amending 7 CFR 273.21(b)(4) published on December 4, 1991, 56 FR 63605, and scheduled to take effect on February 1, 1992.

Since that time, several other pieces of legislation have been enacted, each delaying the effective date of Section 1723. Implementation was initially postponed by Section 908 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237, 105 Stat. 1818, December 13, 1991) until April 1, 1993, and then by Pub. L. 103–11 (107 Stat. 41, April 1, 1993) until February 1, 1994. In response, in a November 1, 1993, rulemaking, the Department proposed at 58 FR 58459 a new implementation date of February 1, 1994. Following publication of that proposed rule, Section 1 of Pub. L. 103–205 (107 Stat. 2418) was enacted on December 17, 1993, again postponing implementation of the prohibition concerning MRRB on reservations until March 15, 1994. State agencies were notified of this delay through an implementing memorandum dated January 6, 1994.

On March 25, 1994, the Food Stamp Program Improvements Act of 1994 (Pub. L. 103–225 (108 Stat. 106)) was enacted. Section 101(a) of that law modified the provision prohibiting monthly reporting for households residing on reservations that had been added to section 6(c)(1)(A) of the Act (7 U.S.C. 2015(c)(1)) by Section 1723 of the Leland Act. Section 6(c)(1)(C)(iii) now prohibits State agencies which were not requiring households residing on reservations to submit monthly reports on March 25, 1994, from establishing monthly reporting requirements for these households. These households may be retrospectively budgeted. State agencies that were using monthly reporting on March 25, 1994, for households residing on reservations may continue to do so if certain enumerated conditions are met. On August 29, 1994, in the Miscellaneous Provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 and the Earned Income Tax Credit Amendment final rule (59 FR 44303), the Department addressed the prohibition against establishing new monthly reporting requirements for households residing on reservations if no monthly reporting system was in place on March 25, 1994.

On June 6, 1995 at 60 FR 29767, the Department proposed regulations that would address the provisions in Section 101(a) of Pub. L. 103–225 dealing with the one-month grace period afforded reservation households for submitting required reports, 7 U.S.C. 2015(c)(1)(C)(i) and (ii). This proposal was to establish the following requirements for a State agency if it requires monthly reporting for households residing on reservations:

(1) Reinstate benefits without requiring a new application for any household that submits a report not later than one month after the end of the issuance month; and

(2) do not delay, reduce, suspend, or terminate the allotment of a household that submits a report not later than one month after the end of the month in which the report is due; and

(3) establish two-year certification periods for households on reservations required to submit monthly reports, unless the State agency is granted a waiver for shorter certification periods.

The Department provided the public 60 days to comment on the regulatory proposals. For additional information on the provisions of this rule, the reader should refer to the preamble of the proposed rule, 60 FR 29767–70. The Department received two comments on the proposed rule, both from State agencies. Both commenters opposed the rule as proposed; one of the commenters offered alternative procedures. These comments are discussed below.

Definition of Residing on a Reservation

Section 3(j) of the Act (7 U.S.C. 2012(j)) defines a reservation as ''the geographically defined area or areas over which a tribal organization (as that term is defined in subsection (3)(p)) exercises governmental jurisdiction.'' Section 3(p) (7 U.S.C. 2012(p)) of the Act defines a tribal organization as ''the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), * * *, as well as any Indian tribe, band, or community holding a treaty with a State government.'' Section 101(a) of Pub. L. 103–225 did not modify the Act's definition of a reservation or tribal organization. The Department proposed in § 273.21(t)(1) to adopt these definitions for the purpose of determining whether a household is residing on a reservation. One commenter opposed these definitions because the boundaries of the reservations in his State did not correspond to geographic and ZIP code systems used by the State agency in its certification process. That commenter wanted to allow applicants and recipients to indicate to State agencies whether they resided on reservations and also wanted State agencies to not be responsible for inaccurate recipient indications of residency. The Department has no discretion in the definition of a reservation, since the term is described in the Act. Therefore, the Department is adopting § 273.21(t)(1) as proposed.

The regulation does not establish any proscriptive requirements on a State agency for determining residency on a reservation. Therefore, a State agency is free to establish its own method for establishing residency. However, existing quality control procedures would be used to determine whether a variance existed in a household's actual as opposed to claimed residency. The definition of a reservation used in the quality control procedure would be the definition in the regulations at 7 CFR 271.2.

Certification Periods

In light of the amendments to Section 6(c)(1) of the Act made by Section 101(a) of Pub. L. 103–225, the Act now requires that State agencies establish two year certification periods for households residing on reservations that are required to submit monthly reports (7 U.S.C. 2015(c)(1)(C)(iv)). Section 6(c)(1)(C)(iv) allows FCS to permit a State agency to establish certification periods for households residing on reservations shorter than two years if the State agency can show good cause for a shorter certification period. The Department proposed in § 273.21(t)(2) that State agencies certify households residing on reservations subject to monthly reporting for two years; in § 273.21(t)(2)(i), that a State agency may request a waiver from FCS to allow it to establish shorter certification periods for those households; and in § 273.21(t)(2)(ii), that a State agency may, for administrative ease, opt to continue the two-year certification period for any household that moves off a reservation. The Department did not receive any comments on these provisions. Accordingly, the Department is adopting § 273.21(t)(2) as proposed.

Missing and Incomplete Monthly Reports

Section 101(a) of Pub. L. 103–225 (7 U.S.C. 2015(c)(1)(C)(ii)) prohibits a State agency from delaying, reducing, suspending, or terminating the benefits of a household residing on a reservation that submits a report not later than one month after the end of the month in which the report is due. Normally, if a complete monthly report is not received within the time frames specified in 7 CFR 273.21, a State agency would terminate the household. Under Section 101(a) of Pub. L. 103–225, a State agency must now issue benefits to a household residing on a reservation on its normal issuance date even if the household has failed to submit a monthly report. In order to implement this provision, the Department proposed in § 273.21(t)(3)(i) to require a State agency to provide a household residing on a reservation which does not submit its monthly report by the issuance date with the same benefit amount that the household received the previous month. This issuance must be provided to the household on the household's normal issuance date. If the household's report is received prior to the issuance date, but too late to be processed without delaying the household's issuance, the Department proposed that the household be issued its benefits on the normal issuance date.

In § 273.21(t)(3)(ii), the Department proposed to require a State agency to provide benefits to a household residing on a reservation on the normal issuance date if the household submitted an incomplete monthly report that could not be completed by the normal issuance date. The State agency would be required to attempt to have the household complete the report prior to the normal issuance date, in accordance with the procedures in 7 CFR 273.21(j).

The Department proposed in § 273.21(t)(3)(iii) that if a household failed to submit a monthly report or submitted an incomplete monthly report that was never fully completed and then failed to submit the next consecutive monthly report or submitted an incomplete report for the next consecutive monthly report that was not subsequently completed by the issuance date, the household's participation would be terminated in accordance with the provisions in 7 CFR 273.21(m). Also in § 273.21(t)(3)(iii), the Department proposed that the household would not be terminated if it failed to ever submit or complete the first missing monthly report so long as it submitted the next report by the end of the month in which it was due.

The Department received one comment on the proposed provisions in § 273.21(t)(3). That commenter opposed the proposal as complicated, cumbersome, and costly. Further, the commenter believed that the proposal was contrary to the Department's efforts to improve program integrity and promote personal responsibility. The State agency commenting had already implemented the provision. In its implementation it was requiring the household to submit *the missing report* prior to any subsequent issuance after the initial grace month issuance. If the missing report was not submitted by the end of the issuance (or grace) month, the household would be terminated. The household would not be reinstated unless it submitted the missing report by the end of month following the issuance month.

In light of this comment, the Department has decided to revise the proposed procedures significantly. These revisions are consistent with the Department's goals to increase administrative flexibility for State agencies. Therefore, the Department is replacing the proposed § 273.21(t)(3) with the following language which essentially tracks the language of Section 6(c)(1)(C)(ii) of the Act: ''The State agency shall not delay, reduce, or suspend the allotment of a household that fails to submit a report by the issuance date.'' Each State agency will be responsible for deciding what report must be submitted—either the missing report [as the commenter suggested] or the next month's report [as was proposed]. The State agency shall make that decision based on what it believes is most appropriate for recipients and most administratively feasible for that State. Additionally, each State agency may unilaterally decide whether to consider a report received too late to act on or an incomplete report as ''submitted'' for purposes of this provision.

Benefit Determination

The Department proposed in § 273.21(t)(4) that, in appropriate instances, a State agency repeat the previous month's benefit amount if a report is not received by the issuance date of the next month's allotment. In addition, the Department proposed in § 273.21(t)(4) that a State agency issue the household's benefits based on the previously submitted report without regard to any changes in the household's circumstances that were not completely reported on or verified. Finally, the Department proposed in § 273.21(t)(4) that a State agency adjust the amount of the benefits issued if there was any information on the incomplete report that can be used as submitted. The Department received one comment addressing the requirement in § 273.21(t)(4) to issue the previous month's benefit amount if a report is not received by the issuance date. That commenter opposed the proposal because it provided unequal treatment to households required to monthly report based on whether they lived on or off a reservation. The Department has no discretion in this requirement. Section 101(a)(2) of Pub. L. 103–225 (7 U.S.C. 2015(c)(1)(C)(ii)) requires that the State agency not delay, reduce, suspend, or terminate the allotment of a household that submits a report not later than one month after the end of the month in which the report is due; i.e., the State agency must issue benefits on the issuance date although a monthly report has not been received.

As discussed above in the section of the preamble concerning missing and incomplete reports, a commenter opposed the requirements in § 273.21(t)(3) to issue benefits when a report was incomplete. That commenter also opposed the requirement in proposed § 273.21(t)(4) that State agencies act on information that would otherwise be considered incomplete. The Department has decided not to adopt § 273.21(t)(4) as proposed. The

revisions in § 273.21(t)(3), as adopted herein, specify that benefits not be delayed, reduced, suspended, or terminated. Thus, each State agency is required by that provision to issue benefits on the household's normal issuance date if it fails to submit a monthly report. Each State agency may decide whether to adjust benefits for completed information on an otherwise incomplete report. Final § 273.21(t)(3) will consist of proposed (t)(3) and (t)(4), with the modifications discussed herein.

Reinstatement

Section 101(a) of Pub. L. 103–225 (7 U.S.C. 2015(c)(1)(C)(i)) provides that, if a household is terminated for failing to submit or to complete a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is received no later than the last day of the month following the issuance month. The Department proposed at § 273.21(t)(5) to require that a State agency reinstate a household terminated in accordance with § 273.21(t)(3)(iii) without the household being required to submit a new application if a complete monthly report was received no later than the last day of the month following the month the household was terminated. One comment was received, opposing the provision as proposed. The Department has modified the proposed rule in light of the comment discussed above. The final rule on this is being renumbered § 273.21(t)(4) as opposed to (t)(5) to reflect the decision not to adopt as final proposed § 273.21(t)(4) discussed above. The phrase ''or to complete'' is being removed from the proposal in this final rule. Removing this phrase reflects the options regarding reports available to the State agency as discussed above.

Notices

In § 273.21(t)(6)(i), the Department proposed that all notices regarding changes in a household's benefits meet the definition of adequate notice as defined in 7 CFR 271.2. The Department also proposed in § 273.21(t)(6)(ii) that State agencies provide notice to households about missing or incomplete reports requesting that the household take the action necessary to submit the missing report or to complete an incomplete report. In order to ensure that a household receives adequate notice of any State agency action affecting the household's benefits, the Department proposed in § 273.21(t)(5)(iii) that simultaneously with the issuance of benefits the State agency notify a household if its report has not been received or if it is incomplete. The household should also be informed that the benefits being provided are based on the previously submitted report and that the amount of the allotment does not reflect any changes in the household's circumstances from the previous issuance. Further, this notice would advise the household that, if the next monthly report was not filed timely and completely, the household would be terminated. The proposed notice requirement conformed notice requirements for these special circumstances with current notice requirements for monthly reporting. Finally, in order to ensure that the household would be aware of the termination and its right to reinstatement, the Department proposed in § 273.21(t)(6)(iv) that, if the household is terminated in the consequent month, the State agency would send the notice so the household receives it no later than the date benefits would have been received. This notice would be required to advise the household of its right to reinstatement if a complete monthly report was submitted by the end of the month following termination. This proposed notice requirement was consistent with current notice requirements for monthly reporting.

The Department did not receive any comments on the notice requirements. However, to be consistent with the modifications made above, the Department is modifying the requirements in the final rule to eliminate references to an incomplete report. The Department is adopting the provision as proposed except for this modification.

Supplements and Claims

The Department proposed in § 273.21(t)(7) that, if the household submitted or completed a monthly report after the issuance date but in the issuance month, the State agency would provide the household with a supplement, if warranted. Also, if the household submitted or completed a monthly report or the State agency became aware of a change that would have decreased benefits in some other manner at any time after the issuance date, the Department proposed that the State agency file a claim for any benefits overissued. The Department did not propose that households which submit reports after the issuance month receive restored benefits.

The Department received one comment on proposed § 273.21(t)(7). The commenter did not oppose the claims provision. The commenter opposed the proposal to provide a supplement when the monthly report is received during the issuance month. The commenter believes that 7 CFR 273.12(c)(1)(i) conflicts with the proposed requirement to provide a supplement, and the commenter preferred the option in 7 CFR 273.12(c)(1)(i) to provide increases in the following month, where warranted. That commenter also opposed providing supplements to these households as undermining the reporting requirements and diminishing household responsibility for reporting.

The Department disagrees with the commenter. Section 273.12(c)(1)(i) is not applicable in this situation. The proposed provision is a special provision that takes precedence over 7 CFR 273.12(c)(1)(i). The provision for providing supplements as well as for establishing claims provides for equitable and consistent treatment of late reported information. The Department recognizes that Section 101(a) of Pub. L. 103–225 was intended to provide special treatment to the households residing on reservations. For that reason, the Department is adopting the regulation as proposed. State agencies must provide supplemental benefits if a missing report is submitted during the issuance month. The commenter was concerned about which report would require a supplement to be issued—the missing report for the month for which benefits were issued or the subsequent month's report that would be due in the issuance month. The proposal has been revised to clarify that it only applies to the missing report and not the subsequent report for the following month.

Quality Control Procedures

The legislative history provides that ''a State [agency] will not be adversely affected in regard to its quality control efforts related to those households whose monthly reports are not submitted until a month after the report is due.'' *Congressional Record.* S2905, March 11, 1994. To implement this language, the Department proposed that those certification errors attributable to missing or incomplete monthly reports covered Section 101(a) of Pub. L. 103–225 shall be excluded from the error determination process. One commenter requested clarification of how quality control would handle two situations: (a) the household deliberately withholds a monthly report because they know the information would make them ineligible; and (b) the month prior to the incomplete or missing monthly report is a month in which the household either receives too many or too few food

stamps. The following quality control procedures apply to cases subject to the provisions of this rulemaking and with a review date that falls within the grace period: certification errors that occur during the grace period would be excluded; certification errors occurring prior to the grace period would be reviewed in accordance with existing procedures in the FCS Handbook 310.

Implementation

The Food Stamp Program Improvements Act of 1994 was effective upon enactment, March 25, 1994. On March 31, 1994, the Department issued a memorandum notifying State agencies of the legislation and the March 25, 1994, effective date. State agencies were directed to implement the requirements immediately. Recognizing that the statutory amendments regarding the monthly reporting on reservations have already been implemented through the above described memorandum and in order to provide for the orderly implementation of the specific provisions of this proposed rule, the Department proposed that this rule be effective in any given State upon implementation by the State agency but in no event later than the first day of the first month 60 days after publication of the final rule. The Department did not receive any comments on the implementation schedule as proposed. Accordingly, this action amends 7 CFR 272.1(g) to add a new paragraph to address implementation requirements for this final action.

Quality control variances resulting from implementation of the remaining provisions of this final rule will be excluded for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(12), as modified by 7 U.S.C. 2025(c)(3)(A).

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citations of Parts 272 and 273 continue to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(150) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(150) *Amendment No. 365.* This provision is effective December 16, 1996 and must be implemented no later than March 1, 1997. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii) of this chapter.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2a. In § 273.21, a new paragraph (t) is added to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(t) *Monthly reporting requirements for households residing on reservations.* The following procedures shall be used for households which reside on reservations and are required to submit monthly reports:

(1) *Definition of a reservation.* For purposes of this section, the term ''reservation'' shall mean the geographically defined area or areas over which a tribal organization exercises governmental jurisdiction. The term ''tribal organization'' shall mean the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), as well as any Indian tribe, band, or community holding a treaty with a State government.

(2) *Certification periods.* Any household residing on a reservation that is required to submit a monthly report shall be certified for two (2) years.

(i) A State agency may request a waiver from FCS to allow it to establish certification periods of less than two (2) years if it is able to justify the need for the shorter periods. Any request for a waiver shall include input from the affected Indian tribal organization(s) and quality control error rate information for the affected households.

(ii) The State agency may opt to continue the two-year certification period for any household that moves off the reservation. If the State agency adopts this option and the household is still living off the reservation at the time it is subject to required recertification, the household shall be subject to the certification period requirements in § 273.10(f)(4). If the State agency does not adopt this option, any household that moves off the reservation shall have its certification period shortened. A household continuing to be subject to monthly reporting shall not have its certification period shortened to less than six months. A household becoming subject to change reporting shall not have its certification period end any earlier than the month following the month in which the State agency determines that the certification period shall be shortened.

(3) *Benefit determination for missing reports.* The State agency shall not delay, reduce, or suspend the allotment of a household that fails to submit a report by the issuance date.

(4) *Reinstatement.* If a household is terminated for failing to submit a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is submitted no later than the last day of the month following the month the household was terminated.

(5) *Notices.* (i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2 of this chapter.

(ii) If a household fails to file a monthly report by the specified filing date, the State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete;

(B) What the household must do to complete the form;

(C) If any verification is missing;

(D) That the Social Security number of a new member must be reported, if the household has reported a new member but not the new member's Social Security number;

(E) What the extended filing date is;

(F) That the State agency will assist the household in completing the report; and

(G) That the household's benefits will be issued based on the previous month's submitted report without regard to any changes in the household's circumstances if the missing report is not submitted.

(iii) Simultaneously with the issuance, the State agency shall notify a household, if its report has not been received, that the benefits being provided are based on the previous month's submitted report and that this benefit does not reflect any changes in the household's circumstances. This notice shall also advise the household that, if a complete report is not filed timely, the household will be terminated.

(iv) If the household is terminated, the State agency shall send the notice so the household receives it no later than the date benefits would have been received. This notice shall advise the household of its right to reinstatement if a complete monthly report is submitted by the end of the month following termination.

(6) *Supplements and claims.* If the household submits the missing monthly report after the issuance date but in the issuance month, the State agency shall provide the household with a supplement, if warranted. If the household submits the missing monthly report after the issuance date or the State agency becomes aware of a change that would have decreased benefits in some other manner, the State agency shall file a claim for any benefits overissued.

Dated: July 15, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–26071 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–30–U

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7 CFR Parts 272, 273, 278, and 279

[Amendment No. 364]

RIN 0584–AB60

Food Stamp Program: Simplification of Program Rules

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes provisions of a proposed rulemaking published on January 11, 1995. It amends Food Stamp Program rules relating to residency, social security numbers, combined allotments, excluded resources, contract income, self-employment expenses, certification periods, the notice of adverse action, recertification, and suspension. The amendments simplify regulatory requirements and increase State agency flexibility. The rule also makes several technical amendments to Food Stamp Program rules.

DATES: This final rule is effective November 18, 1996 and must be implemented no later than May 1, 1997, except the provisions of 7 CFR 273.14(b)(2), which have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1995. The provisions of this section will become effective upon approval. FCS will publish a notice in the Federal Register announcing the effective date and implementation date.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

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

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The reporting and recordkeeping burden associated with the application, certification, and continued eligibility of food stamp applicants is approved under OMB No. 0584–0064. The burden for applications, including applications for recertification, is estimated to average .2290 hours per response.

To determine the continued eligibility of food stamp recipients, State welfare agencies must recertify eligible households whose certification periods have expired, and households are required to submit a recertification form. Section 273.14(b)(2) of this rule authorizes State agencies to use a modified form of the application used for initial application.

The amendments to 7 CFR 273.14(b)(2) made by this rule do not impose any new collection requirements. The methodology used to determine the current burden estimates for all applications assumes that some households will be recertified more often than other households. The methodology also assumes that every applicant will complete every line item on the application form; therefore, the burden is overestimated for some households and underestimated for others. Based on this methodology, we believe the current burden estimate sufficiently reflects the potential reduced burden resulting from use of a modified recertification form.

Comments. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250. Comments and recommendations on the proposed information collection must be received by December 16, 1996.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Public Participation

This rule contains technical amendments at 7 CFR 272.1(g)(74), 273.2(f)(1), 273.4(a)(2), 273.4(a)(9), 273.4(a)(11), 273.20, 278.1(h), and 279.3 which were not part of the proposed rule published January 11, 1995 and are unrelated to the provisions of the proposed rule. These amendments are being published without an opportunity

for public comment and will become effective 30 days following publication. The amendments are technical in nature and public comment would not be useful or necessary. Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has determined that, in accordance with 5 U.S.C. 553(b)(3)(B), good cause exists for publishing the technical amendments without taking public comment.

Background

On January 11, 1995, the Department published a proposed rule at 60 FR 2703 in which it proposed to revise Food Stamp Program regulations in response to State agency requests for waivers of Program requirements and suggestions for simplification of rules. In some cases, we proposed to amend the regulations to incorporate guidance we had already provided to State agencies. In other instances, we proposed to modify Program rules to provide more consistency with requirements in the Aid to Families with Dependent Children (AFDC) Program. Comments were solicited on the provisions of the proposed rule through March 13, 1995, and a total of 26 comments were received. This final action addresses the commenters' concerns. Readers are referred to the proposed rule for a more complete understanding of this final action.

Combined allotments—7 CFR 273.2(i) and 274.2(b)

In the January 11, 1995 rule, the Department proposed changes to the regulations on issuance of combined allotments. At the time the proposed rule was published, the regulations at 7 CFR 274.2(b)(3) provided that eligible households applying after the 15th of the month that qualify for expedited service would receive a combined allotment (prorated benefits for the application month and full benefits for the subsequent month) if they supplied all required verification within the 5-day expedited service timeframe. If the household did not supply all required verification within the expedited service timeframe, the household received a prorated amount for the initial month issued within 5 days of application (with waived verification, if necessary, to meet the expedited timeframe) and a second allotment for the subsequent month issued after all necessary verification has been obtained. In the January 11, 1995 rule, the Department proposed to amend the regulations to require that if an eligible household applies for food stamps after the 15th of the month and is entitled to expedited service, it would receive the prorated initial month's allotment and the full allotment for the second month within the expedited timeframe. Additional verification requirements would be postponed until the end of the second month. The proposed amendments would bring the regulations into conformance with current food stamp policy on combined allotments, as announced in a June 16, 1993, policy memorandum issued to FCS regional Food Stamp Program directors.

The Department also proposed to reorganize the regulations on combined allotments. At the time the proposed rule was published, the regulations on issuance of a combined allotment were contained at 7 CFR 274.2(b)(2), (3), and (4). The Department proposed to move those combined allotment requirements out of 7 CFR 274.2(b) and into 7 CFR 273.2(i)(4). In 7 CFR 274.2, the Department proposed to delete paragraphs (b)(2), (3), and (4), and redesignate paragraphs (b)(1), (c), (d), and (e) as paragraphs (b), (d), (e), and (f), respectively. The Department proposed to add two sentences to the end of redesignated paragraph (b) which would contain the requirements for issuing benefits to expedited service households. The Department also proposed to add a new paragraph (c) which would contain the provision of former paragraph (b)(2) concerning the State agency option to issue the combined benefits in one allotment or two, as long as they are provided at the same time and reference the combined allotment regulations at 7 CFR 273.2.

The above proposed organizational changes, with the exception of moving the combined allotment requirements formerly contained at 7 CFR 274.2(b)(2), (3), and (4) into 7 CFR 273.2, have already been finalized in the Food Stamp Program's Benefit Delivery Rule, published on April 25, 1995 at 60 FR 20178. In this rule, therefore, the Department is only finalizing the provisions moving the requirements formerly contained in 7 CFR 274.2(b) to 7 CFR 273.2.

In the January 11, 1995 rule, the Department proposed to revise the regulations at 7 CFR 273.2(i)(4)(iii)(C), and to add two new paragraphs, 273.2(i)(4)(iii)(D) and (E). The proposed regulations at 7 CFR 273.2(i)(4)(iii)(C) contained the requirements formerly contained at 7 CFR 274.2(b)(2), which concerned combined issuance for households certified under normal processing timeframes. The proposed regulations at 7 CFR 273.2(i)(4)(iii)(D) contained the new requirement that a household which applies after the 15th of the month and is processed under expedited service procedures shall be issued a combined allotment consisting of prorated benefits for the initial month of application and benefits for the first full month of participation. In these cases, any unsatisfied verification requirement would be postponed until the end of the first full month. The proposed regulations at 7 CFR 273.2(i)(4)(iii)(E) contained the requirements formerly contained at 7 CFR 274.2(b)(4), which concerned households not entitled to combined allotments.

The Department received three comments on the proposed changes. One commenter opposed the proposed relocation of the combined allotment requirements from 7 CFR 274.2(b) to 273.2(i). The commenter believed that the relocation only promoted confusion. As noted above, however, the proposal to remove the combined allotment requirements from 7 CFR 274.2(b) was finalized in the Benefit Delivery Rule. However, we now believe it is preferable to separate the combined allotment provisions for households processed under the normal 30-day processing standard from those for households certified under the expedited service provisions of 7 CFR 273.2(i). Therefore, we are adding a new paragraph to 7 CFR 273.2(g), *Normal processing standard*, to include the provisions of proposed § 273.2(i)(4)(iii)(C) and former 7 CFR 274.2(b)(2) concerning combined allotments for households processed under the 30-day requirement. This paragraph is titled *Combined allotments* and is designated § 273.2(g)(2). Current paragraph (g)(2) is redesignated as paragraph (g)(3). Proposed paragraphs 273.2(i)(4)(iii)(D) and (E) are paragraphs 273.2(i)(4)(iii)(C) and (D) in this final rule.

The second commenter asked that the regulations at 7 CFR 273.2(b) and 274.2(b) specify that combined allotments apply only for those households initially applying for food stamps for which proration is a factor. As noted above, the regulations at 7 CFR 274.2 no longer provide detailed requirement for use of combined allotments. The regulations at 7 CFR 273.2(b) do not address combined allotments; however, the Department believes that the commenter meant 7 CFR 273.2(i). The Department believes that the proposed regulations at 7 CFR 273.2(i)(4)(iii)(D) are very specific as to when a combined allotment can be issued. Therefore, the Department is not adopting the commenter's suggestion and is adopting the proposed provisions as final.

Another commenter thought that in relocating instructions on combined

allotments from 7 CFR 274.2(b) to 7 CFR 273.2(i), the Department deleted the provision that the combined allotment may be in the form of two allotments issued at the same time. As indicated above, the Benefit Delivery rule moved this provision from 7 CFR 274.2(b) to new paragraph 274.2(c). In this rule, we are including a reference to 7 CFR 274.2(c) in revised paragraph 273.2(i)(4)(iii)(C) and new paragraph 273.2(g)(2).

In the January 11, 1995 rule, the Department proposed additional changes to the regulations at 7 CFR 273.2(i)(4) to bring those regulations into conformance with the new combined allotment requirements. The regulations at 7 CFR 273.2(i)(4)(iii)(B) currently require that a household which applies after the 15th of the month and is assigned a certification period of longer than one month, must have all postponed verification completed before it can be issued its second month's benefits. Migrant households which apply after the 15th of the month and are assigned certification periods of longer than one month must provide all postponed verification from within-State sources before the second month's benefits can be issued, and must provide all postponed verification from out-of-State sources before the third month's benefits are issued. Because of the change in policy regarding combined allotments, eligible households that are entitled to expedited service and apply after the 15th of the month must now receive a combined allotment which includes their first and second month's benefits. Since these households will have already received their second month's benefits, postponed verification must now be completed prior to issuance of the third month of benefits. As noted above, this is current policy for migrants in regard to completing out-of-State verification, and the Department proposed to broaden the requirement to make it mandatory for all households which apply after the 15th of the month and are assigned certification periods of longer than one month. The Department proposed to amend 7 CFR 273.2(i)(4)(iii)(B) accordingly. The Department also proposed to make a conforming amendment to 7 CFR 273.10(a)(1)(iv), which contains a verification requirement similar to that currently contained in 7 CFR 273.2(i)(4)(iii)(B). The Department received no comments on the proposed changes and is adopting them as final.

Under current regulations at 7 CFR 273.2(i)(4)(iii)(B), when households which apply for benefits after the 15th of the month provide the required postponed verification, the State agency is required to issue the second month's benefits within 5 working days from receipt of the verification or the first day of the second calendar month, whichever is later. Since the proposed changes in combined allotment procedures required that households be issued the prorated initial month's allotment and the full allotment for the second month within the expedited timeframe, the requirement at 7 CFR 273.2(i)(4)(iii)(B) is no longer applicable and the Department proposed to remove it in the January 11, 1995 rule. The Department received no comments on the proposal and is adopting it as final.

Current regulations at 7 CFR 273.2(i)(4)(iii)(C) require that households which are eligible for expedited service and that apply after the 15th of the month must be issued their second month's benefits on the first working day of the second calendar month, not the day benefits would normally be issued in a State using staggered issuance. Because of the potentially lengthy period of time between issuance of the combined allotment for the month of expedited service and the first full month of participation and issuance of an allotment for the third month of participation in a staggered issuance system, the Department proposed to retain that issuance requirement at 7 CFR 273.2(i)(4)(iii)(C) for the third month of benefits. The Department proposed to add a new paragraph 7 CFR 273.2(i)(4)(iii)(F) which required that in States with staggered issuance, households be issued their third allotment by the first working day of the third calendar month. For allotments in subsequent months, State agencies would employ their normal issuance mechanisms.

The proposal that households be issued their third allotment by the first working day of the third calendar month received a substantial number of negative comments. Twelve commenters wrote to oppose the provision. The commenters felt that the provision would impose a tremendous administrative burden on State agencies. These commenters claimed that the proposed change would require costly computer reprogramming or necessitate a manual system for issuing benefits in the third month that would increase workloads and be error prone. In addition, commenters believed that households would be better served if they received their third month's allotments on the normal issuance date rather than on the first of the month. Early issuance in the third month could mean that the household would have to wait as long as six or seven weeks before receiving benefits for its fourth month of participation. One commenter did support the proposed provision, on the grounds that it promotes consistency with current policy for migrants.

The Department accepts the arguments raised by the 12 commenters who opposed the proposed provision at 7 CFR 273.2(i)(4)(iii)(F) and is deleting it from this final rule. A household that receives a combined allotment and resides in a State with a staggered issuance system will, at some point during its certification period, have to stretch its benefits to cover a period longer than one month. The proposed procedure would not have prevented that, but would have imposed an unnecessary administrative burden on State agencies. Therefore, the Department is not adopting the proposed provision.

Current regulations at 7 CFR 273.2(i)(4)(i)(B) require that households entitled to expedited service furnish an SSN for each household member before the first full month of participation. Households that are unable to provide the required SSNs or who do not have one prior to the first full month of participation can participate only if they satisfy the good cause requirements specified in 7 CFR 273.6(d).

Because of the change in combined allotment policy, eligible households that apply after the 15th of the month and are entitled to expedited service can receive their second month's benefits without having to furnish an SSN. In the preamble of the proposed rule, the Department stated its intention to revise the regulations at 7 CFR 273.2(i)(4)(i)(B) to require that households entitled to expedited service that apply after the 15th of the month furnish an SSN for each person prior to the third month of participation. The Department received no negative comments on the proposal. One commenter, however, did note that the proposed change to 7 CFR 273.2(i)(4)(i)(B) discussed in the preamble was not accompanied by the proposed new regulatory language. The Department apologizes for the omission, but believes the public was given sufficient notice of the Department's intent. Therefore, the Department is adopting the proposed change to 7 CFR 273.2(i)(4)(i)(B) discussed in the preamble to the proposed rule as final in this rule.

Current regulations at 7 CFR 273.2(i)(4)(iii) provide that households that are certified for expedited service and have postponed verification requirements may be certified for either the month of application or for longer

periods, at the State agency's option. 7 CFR 273.2(i)(4)(iii)(A) currently addresses verification requirements for households that are certified only for the month of application, and 7 CFR 273.2(i)(4)(iii)(B) currently addresses verification requirements for households that are certified for longer than the month of application. Neither section of the regulations addresses verification requirements for households that apply before the 15th of the month. The Department proposed to eliminate this deficiency in the January 11, 1995 rule by amending 7 CFR 273.2(i)(4)(iii)(A) to address verification requirements for households that apply on or before the 15th of the month and to amend 7 CFR 273.2(i)(4)(iii)(B) to address verification requirements for households that apply after the 15th of the month. The Department received no comments on these proposals and is adopting them as final.

Current regulations at 7 CFR 273.2(i)(4)(iii) give State agencies the option of requesting any household eligible for expedited service which applies after the 15th of the month to submit a second application (at the time of initial certification) if the household's verification requirements have been postponed. Under current policy, that second application would be denied for the first month and acted on for the second month. However, now that expedited service households will be receiving a combined allotment of their first and second month's benefits, under our proposal, the second application would be denied for both the first and second months and acted on for the third month. Believing that current regulations do not allow for this procedure, the Department proposed to amend the regulations at 7 CFR 273.10(a)(2)(i) to require that if a household files an application for recertification in any month in which it is receiving food stamp benefits, the State agency shall act on that application for eligibility and benefit purposes starting with the first month after the current certification period expires.

Several commenters wrote to point out that the text of the proposed regulatory change to 7 CFR 273.10(a)(2)(i) did not appear in the proposed rule. The proposed change was inadvertently omitted, and the Department apologizes for any confusion the omission may have caused.

Three commenters objected to the proposed procedure as described in the preamble. One thought it was unclear whether the proposed provision was tied to the State option of requesting the applicant for expedited service applying after the 15th of the month to submit a second application when verification is postponed, or if it would be appropriate for all recertifications. The commenter thought that if it applied to all cases, it could prove to be an administrative problem. Two commenters were concerned that the information on the application, if kept pending too long, would be outdated. One asked if a household certified for 12 months filed an application in its third month of eligibility, would the State agency have to keep track of and use the application for a certification period some 10 months later.

The Department agrees with the commenters that the proposed language is unclear. The proposed provision was intended to be tied to the State option of requesting that the household applying for expedited service after the 15th of the month submit a second application when verification is postponed. It was meant to apply only in circumstances in which the household has been certified for only the month of application and the subsequent month. In these circumstances, the State agency would deny the second application for both the first and second months and act on it for the third month, as described in proposed section 273.2(i)(4)(iii)(F). It was not the Department's intention that a State agency act on an application that had been submitted more than a month and a half earlier. The Department, therefore, is not amending 7 CFR 273.10(a)(2)(i) to include the procedure. Since the procedure is only valid in instances in which the household is entitled to expedited service and applies after the 15th of the month, the Department thinks it would only promote confusion to have a reference to the procedure in any section of the regulations other than the section on expedited service. The Department is also removing discussion of the second application option from 7 CFR 273.2(i)(4)(iii)(B). The procedures for acting on a second application are already addressed in detail in 7 CFR 273.2(i)(4)(iii)(E) of this rule and the Department sees no advantage to repeating that information at 7 CFR 273.2(i)(4)(iii)(B).

One commenter noted that proposed regulatory language at both 7 CFR 273.2(i)(4)(iii) (A) and (B) includes the requirement that during the certification interview, the State agency should give the household a recertification form and schedule an appointment for a recertification interview. The commenter thought that it was not clear that the requirement applied only if the State agency chooses the option at 7 CFR 273.2(i)(4)(iii) to require a household entitled to expedited service that applies after the 15th of the month to submit a second application. The commenter felt that the requirement would be an unnecessary burden to State agencies that do not choose to require a second application.

The Department agrees with the commenter that the requirement as proposed is unclear and has decided to remove the requirement from both 7 CFR 273.2(i)(4)(iii)(A) and (B). The Department believes the requirement provides unnecessary instruction to State agencies.

The same commenter raised a question on the proposed language at 7 CFR 273.2(i)(4)(iii)(D). That section requires that combined allotments be issued in accordance with requirements at 7 CFR 274.2(c). The commenter thought that the benefits should be issued in accordance with the requirements at 7 CFR 273.2(i)(3)(i), which address expedited service processing standards. The proposed regulations at 7 CFR 273.2(i)(4)(iii)(D) address combined allotments, which have different issuance requirements than normal expedited benefits. The issuance requirements for combined allotments are contained at 7 CFR 274.2(c).

Residency—7 CFR 273.3

Current rules at 7 CFR 273.3 require food stamp households to live in the project area in which they apply unless the State agency has made arrangements for particular households to apply in nearby specified project areas. In order to increase consistency with the AFDC program and the Adult Assistance programs under Titles I, X, XI, and XVI of the Social Security Act, which require that applicants reside in the State but have no project area requirement, the Department proposed in the January 11, 1995 rulemaking to amend 7 CFR 273.3 to give State agencies the option of permitting households to live anywhere in the State rather than in the project area in which they apply for benefits. Under the proposal, State agencies still retained the authority to designate limited project areas and restrict where a given household could apply.

The Department also proposed to add a new paragraph (iii) to 7 CFR 273.2(c)(2) to address application processing timeframes in States which opt to allow Statewide residency. Under the proposal, if a State agency does not require that households apply in specified project areas, the application processing timeframes would begin the

day the application is received by any office.

The Department also proposed a second amendment to 7 CFR 273.3 to clarify the requirements for transferring food stamp cases between project areas. The Department proposed to amend 7 CFR 273.3 to state that when a household moves within a State, the State agency may either require the household to reapply in the new project area or transfer the case from the previous project area to the new one and continue the household's certification without requiring a new application. If the State agency chooses to transfer the case, it must act on changes in the household's circumstances resulting from the move in accordance with 7 CFR 273.12(c) or 7 CFR 273.21. The State agency must also ensure that potential client abuse of case transfers from project area to project area is identifiable through the State agency's system of duplicate participation checks required by 7 CFR 272.4(f). Finally, the State agency must develop transfer procedures to guarantee that the transfer of a case from one project area to another does not affect the household adversely.

We received six comments on the proposal. Five commenters wrote to support the proposal, though one of the five felt that the new provision might be costly to implement and may confuse State staff. Since Statewide residency is an option for State agencies, however, each State can determine for itself if the change in residency requirements is beneficial.

The sixth commenter asked how the change to Statewide residency would affect the definition of mail loss liability as it relates to project areas in 7 CFR 276.2(b)(4)(i). The change to Statewide residency should have no effect on State agencies' mail loss liabilities. The Department believes that there is a clear distinction between Statewide residency for certification purposes and Statewide reporting of mail issuance. A State agency could opt for Statewide residency yet retain project area designations for purposes of mail loss liability.

No negative comments were received on the proposed amendment to 7 CFR 273.3, and the Department is adopting it as final without change.

Social Security Numbers for Newborns—7 CFR 273.2(f)(1)(v), 7 CFR 273.6(b)

Current regulations at 7 CFR 273.6(a) require an applicant household to provide the State agency with the social security number (SSN) of each household member. A household member who does not have an SSN must apply for one before he or she can be certified, unless there is good cause for such failure as provided in 7 CFR 273.6(d). If a household member refuses or fails without good cause to apply for an SSN, the individual is ineligible to participate.

In the January 11, 1995 proposed rule, the Department proposed to amend food stamp regulations to address the Social Security Administration's (SSA) ''Enumeration at Birth'' (EAB) program. Under EAB, parents of a newborn child may apply for an SSN for the child when the child is born if this service is available at the hospital. Most hospitals give parents Form SSA–2853, ''Message From Social Security.'' This receipt form, which describes the EAB process and how long it will take to receive an SSN, contains the child's name and is signed and dated by a hospital official. It is accepted by State agencies for welfare or other public assistance purposes. In the January 11, 1995 rule, the Department proposed an amendment to 7 CFR 273.2(f)(1)(v) to allow a completed Form SSA–2853 to be acceptable as proof of SSN application for an infant. The Department received no negative comments on this proposal and is adopting it as final.

Current regulations at 7 CFR 273.6(d) allow for good cause exceptions to the SSN requirement in cases in which a household is unable to provide or apply for an SSN for a newborn baby immediately after the baby's birth. The regulations allow the household member without an SSN to participate for one month in addition to the month of application. However, good cause does not include delays due to illness, lack of transportation or temporary absences of that household member from the household, and good cause must be shown monthly in order for the household member to continue to participate.

To avoid a delay in adding a new member to the household, the Department proposed to amend 7 CFR 273.6(b) to provide that, in cases in which a household is unable to provide or apply for an SSN for a newborn baby immediately after the baby's birth, a household may provide proof of application for an SSN for a newborn infant at its next recertification. If the household is unable to provide an SSN or proof of application at its next recertification, the State agency would determine if the good cause provisions of 7 CFR 273.6(d) are applicable.

The Department received four comments on this provision of the proposed rule. Two commenters thought that the Department should define ''next'' recertification period. These commenters indicated that the absence of a definition could be a potential problem when a household reports the addition of a newborn to the State agency in the month before the expiration of the household's certification period. One of the commenters thought that the Department should amend the proposed good cause provisions to allow households with a newborn whose certification period ends in the birth month or in the month following the birth month with the same timeframes allowed those households with a newborn who have 10 to 12 months left in the certification period.

The Department acknowledges the difficulties associated with using the concept of ''next certification period'' in the proposed provision. Therefore, the Department is revising the provision to allow households to submit an SSN or proof of application for an SSN at their next recertification or within six months following the month in which the baby is born, whichever is later. The Department believes that amending the provision to include a fixed time period will ensure that all households benefit equally from the change in procedures. The Department also believes that six months is sufficient time for households to acquire the necessary materials to apply for an SSN for a newborn. Accordingly, if the household cannot provide an SSN or proof of application at its next recertification after the birth of a new household member or within six months of the month in which the baby is born, the State agency shall determine if the good cause provisions of 7 CFR 273.6(d) are applicable.

Another commenter noted that AFDC does not have a good cause provision in its SSN regulations, and that the application for a newborn must be done by the end of the month following the month in which the mother is released from the hospital. The Department recognizes that the Food Stamp Program's good cause provision does not conform with the requirements of the AFDC program. The Department believes, however, that the provision is advantageous to participating households, which frequently encounter difficulty obtaining certified copies of birth certificates needed to apply for an SSN, and that this offsets the need for conformity in this area.

Another commenter thought that the proposed change to the SSN requirement for newborns conflicted with expedited service processing requirements, and requested that final regulations clarify whether the newborn

SSN policy supersedes that under expedited processing.

Current regulations at 7 CFR 273.2(i)(4)(i)(B) require that households entitled to expedited service furnish an SSN for each person or apply for one for each person before the first full month of participation. Those household members unable to provide the required SSNs or who do not have one prior to the first full month of participation are allowed to continue to participate only if they satisfy the good cause requirements with respect to SSNs specified in 7 CFR 273.6(d).

To avoid a conflict between the new SSN requirement for newborns and expedited service processing requirements, the Department is amending the expedited service requirements at 7 CFR 273.2(i)(4)(i)(B) to allow a newborn to participate for up to six months following the month of its birth before providing an SSN or proof of application for an SSN.

Funeral Agreements—7 CFR 273.8(e)(2)

Current regulations at 7 CFR 273.8(e)(2) exclude the value of one burial plot per household member from resource consideration. In the proposed rule, we proposed to adopt a funeral agreement policy similar to that of the AFDC program. AFDC regulations at 45 CFR 233.20(a)(3)(i)(4) exclude from resource consideration ''bona fide funeral agreements (as defined and within limits specified in the State plan) of up to a total of $1,500 of equity value or a lower limit specified in the State plan for each member of the assistance unit.'' Accordingly, we proposed to amend 7 CFR 273.8(e)(2) to allow for an exemption from resource consideration of up to $1,500 for bona fide, pre-paid funeral agreements that are accessible to the household. Funeral agreements that are inaccessible to a household were not affected by the proposed rule, as they are excluded from resource consideration under the provisions of 7 CFR 273.8(e)(8).

Three commenters supported this provision. One commenter misunderstood the proposal and thought that the exclusion of up to $1,500 in a bona fide funeral agreement per household member replaced the exclusion of one burial plot per household member currently at 7 CFR 273.8(e)(2). The funeral agreement exclusion is in addition to the exclusion of one burial plot per household member and is not intended to replace the burial plot exclusion. The provisions of the proposed rule are adopted as final.

Determining income—7 CFR 273.10(c)(2)

Current regulations at 7 CFR 273.10(c)(2)(iii) provide that households receiving public assistance payments (PA) or general assistance (GA), Supplemental Security Income (SSI), or Old-Age, Survivors, and Disability Insurance (OASDI) benefits on a recurring monthly basis shall not have their monthly income from these sources varied merely because mailing cycles may cause two payments to be received in one month and none in the next month. In the proposed rule, it was noted that there are other instances in which a household may receive a disproportionate share of a regular stream of income in a particular month. For example, an employer may issue checks early because the normal payday falls on a weekend or holiday. We proposed, therefore, to amend 7 CFR 273.10(c)(2)(iii) to specify that income received monthly or semimonthly (twice a month, not every two weeks) shall be counted in the month it is intended to cover rather than the month in which it is received when an extra check is received in one month because of changes in pay dates for reasons such as weekends or holidays.

Three commenters supported the proposed provision. A fourth commenter objected to the proposed provision being limited to income received on a monthly or semimonthly basis, arguing that income which is received on a weekly or biweekly basis may also be received early (or late) because the normal payday falls on a weekend or a holiday. The commenter thought that any type of payment schedule that is altered due to a holiday, weekend, or vacation should not affect a household's eligibility for food stamps.

Current regulations at 7 CFR 273.10(c)(2)(1) already address fluctuations in income that is received on a weekly or biweekly basis. The regulations require that whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount. Since conversion addresses the receipt of a fifth check (in weekly pay) or a third check (in biweekly pay), the Department is not adopting the commenter's suggestion. The provision is adopted as proposed.

Contract Income—7 CFR 273.10(c)(3)(ii)

Section 5(f)(1)(A) of the Food Stamp Act, 7 U.S.C. 2014(f)(1)(A), provides that households which derive their annual income (income intended to meet the household's needs for the whole year) from contract or self-employment shall have the income averaged over 12 months. Current regulations at 273.10(c)(3)(ii) implement this provision of the Act, stating that ''[h]ouseholds which, by contract or self-employment, derive their annual income in a period of time shorter than 1 year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis.'' The regulations at 7 CFR 273.11(a)(1)(iii) address how self-employment income which is not a household's annual income and is intended to meet the household's needs for only part of the year should be handled. 7 CFR 273.11(a)(1)(iii) provides that ''[s]elf-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover.'' The regulations, however, fail to specify how contract income which is not a household's annual income and is intended to meet the household's needs for only part of the year should be handled. The Department proposed to rectify this omission in the proposed rule by amending 7 CFR 273.10(c)(3)(ii) to clarify that contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be averaged over the period the income is intended to cover. The Department received two comments supporting the proposed provision, and is adopting the provision as final.

Certification Periods—7 CFR 273.10(f)

In the January 11, 1995 publication, the Department proposed changes in the certification period requirements at 7 CFR 273.10(f) to allow State agencies more flexibility in aligning the food stamp recertification and the PA/GA redetermination in joint cases. Section 3(c) of the Food Stamp Act, 7 U.S.C. 2012(c), requires that the food stamp certification period of a GA or PA household coincide with the period for which the household is certified for GA or PA. However, because PA/GA and Food Stamp Program processing standards and the period for which benefits must be provided are not the same, it is often difficult to get the certification periods for the programs to coincide. The Department proposed three procedures which State agencies could employ to align PA/GA and food stamp certification periods. Under the first procedure, when a household is certified for food stamp eligibility prior to an initial determination of eligibility for PA/GA, the State agency would

assign the household a food stamp certification period consistent with the household's circumstances. When the PA/GA is approved, the State agency would reevaluate the household's food stamp eligibility. The household would not be required to submit a new application or undergo another face-to-face interview. If eligibility factors remained the same, the food stamp certification period would be extended up to an additional 12 months to align the household's food stamp recertification with its PA/GA redetermination. The State agency would be required to send a notice informing a household of any such changes in its certification period. At the end of the extended certification period the household would be sent a Notice of Expiration and would have to be recertified before being determined eligible for further food stamp assistance, even if the PA/GA redetermination had not been completed. In the event that a household's PA/GA redetermination is not completed at the end of the food stamp certification period and, as a result, the household's food stamp and PA/GA certification periods are no longer aligned, the State agency could again employ the procedure described above to align those certification periods.

The second procedure for aiding State agencies in aligning PA/GA and food stamp certification periods was to allow State agencies to recertify a household currently receiving food stamps when the household comes into a State office to report a change in circumstances for PA/GA purposes. At that time, the State agency would require the household to fill out an application for food stamps and to undergo a face-to-face interview. If the household was determined eligible to continue receiving food stamps, its current certification period would end and a new one would be assigned.

The third procedure for aiding State agencies in aligning PA/GA and food stamp certification periods was to allow State agencies to assign indeterminate certification periods to households certified for both food stamps and PA/GA. Under this procedure, a household's food stamp certification period would be set to expire one month after the household's scheduled PA/GA redetermination, so long as the period of food stamp certification did not exceed 12 months. Therefore, if a food stamp certification were set for 7 months and would expire the month after the month the PA redetermination was due, but the PA redetermination was not done on time, the food stamp certification period could be postponed up to an additional 5 months to align food stamp recertification and PA/GA redetermination. In the 12th month, the household would have to be recertified for food stamp purposes, even if the PA redetermination had not yet been completed.

The Department received 12 comments on the proposed procedures for aligning certification periods. Five commenters wrote in support of all three proposed options. Three commenters suggested further changes to those procedures. Two asked that the options for aligning food stamp and PA/GA certification periods apply for aligning food stamp certification periods and those of the Medicaid program and other medical programs. One commenter suggested a fourth option in which food stamp certification reviews could be completed at the same time as AFDC reviews or applications. The remaining commenters raised various questions or criticized the proposed options. One commenter objected that the proposed changes did not address the 24-month certification period requirement for monthly reporting households residing on Indian reservation land. Another thought that the third option failed to address required client notices. One commenter thought that the first and third options appear error prone because specific criteria for extending certification periods is not provided. Two commenters felt that the second and third options would increase State agency workload rather than reduce it.

The Department offered the options in order to simplify administration of the requirement in section 3(c)(1) of the Act that PA/GA certification periods be aligned with food stamp certification periods. In light of the comments received on the proposed provision, and the Department's commitment to extending flexibility to State agencies, the Department is further simplifying the requirements at 7 CFR 273.10(f)(3). The section is revised to allow the State agency to shorten or extend a household's food stamp certification period in order to align the food stamp recertification date with the PA or GA redetermination date. The household's food stamp certification period can only be extended when the household is initially approved for PA/GA. Although this rule offers considerable flexibility in aligning the food stamp and PA/GA recertifications, we anticipate that an extension of no more than 4 months will be necessary in most cases. The extension would generally be needed because of the difference in approval dates for food stamps and the other program in a joint PA or GA case, and extension of the food stamp certification for a few months would allow for alignment under normal circumstances. The food stamp certification period may be extended up to 12 months to align the food stamp certification period with the PA/GA redetermination period. If the household's certification period is extended, the State agency shall notify the household of the changes in its certification period. At the end of the extended certification period the household must be sent a Notice of Expiration and must be recertified before being eligible for further food stamp assistance, even if the PA or GA redetermination is not set to expire.

If the household's certification period is shortened, the State agency shall send it a notice of expiration which informs the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. The notice of expiration shall also explain to the household that its certification period is expiring in order that it may be recertified for food stamps at the same time that it is redetermined for PA or GA.

In response to commenters' suggestions, the Department is further revising 7 CFR 273.10(f)(3) to offer State agencies the option of extending or shortening certification periods as noted above in order to align them with certification periods in Medicaid and other medical programs. The Department is offering this as an option instead of a requirement because the Food Stamp Act does not require that the food stamp certification period of a household also receiving Medicaid or other medical programs coincide with the period for which the household is certified for those programs.

Calculating Boarder Income—7 CFR 273.11(b)

Current rules at 7 CFR 273.11(b) provide that State agencies must use the maximum food stamp allotment as a basis of establishing the cost of doing business for income received from boarders when the household does not own a commercial boardinghouse. Boarders are not included as members of the household to which they are paying room and board. The households receiving the room and board payments must include those payments as self-employment income, but can exclude that portion of the payments equal to the cost of doing business. The rules provide that the cost of doing business is either (1) the maximum food stamp allotment for a household size equal to

the number of boarders; or (2) the actual documented cost of providing room and meals, if that cost exceeds the maximum allotment.

In the proposed rule, the Department proposed to revise 7 CFR 273.11(b)(1)(ii)(C) to provide State agencies with an additional option for calculating boarder income. Under the proposal, State agencies would have the option to use actual costs, the maximum allotment for a household size equal to the number of boarders, or a flat amount or fixed percentage of gross income from boarders to determine the cost of doing business of households with boarders. The Department noted in the proposed rule that the AFDC program used a flat percentage equal to 75 percent of the boarder-generated income (45 CFR 233.20(a)(6)(v)(B)). We, however, did not propose a percentage limit, but requested suggestions on an appropriate percentage from commenters.

We received 11 comments on the proposed provision. One commenter recommended that we set the percentage of gross income at 75 percent. A second commenter suggested that we use the same percentage limit as is used in the AFDC program. A third commenter said that they were not opposed to an additional method of calculating boarder income as long as they are able to coordinate it with their AFDC program. Another commenter said that the AFDC program in their State does not provide for an exclusion of 75 percent of boarder-generated income. It provides for the exclusion of the actual cost of doing business. If that cost is not documented, or if it is below $60 a month, the State agency excludes $60 as the cost of doing business. Another commenter suggested not setting a percentage limit, but allowing State agencies to use a percentage that reflects circumstances in their State.

Since there was no consensus among commenters on the percentage of gross income from boarders that should be used to determine the cost of doing business of households with boarders, the Department has decided to retain the language of the proposed rule and allow State agencies to set their own flat amount or fixed percentage of boarder-generated income to determine the cost of doing business for households with boarders. As in the proposed rule, the method used to determine the flat amount or fixed percentage must be objective, justifiable, and stated in the State's food stamp manual. If the State agency selects the fixed percentage option to determine the cost of doing business for households with boarders, it must give households the opportunity to claim actual costs.

One commenter asked that the final rule clearly reflect that it is the State agency, not the household, that chooses the options available for the household to use as a cost of doing business. Another commenter asked if the State agency must choose only one of the three proposed options and apply it to all households that do not opt to use actual business expenses, or can a household or State agency choose any of the three options on a case-by-case basis.

The Department believes that the household should be allowed to choose the method used to determine its boarder-generated income. The Department is amending the proposed provision at 7 CFR 273.11(b)(1)(ii) to clearly state this policy.

Day Care Providers—§ 273.11(b)(2)

Under current regulations at 7 CFR 273.11(a)(4)(i), households which provide in-home day care can claim the cost of meals provided to individuals in their care as a cost of doing business, provided they can document the cost of each meal. In the proposed rule, the Department proposed to allow households who are day care providers to use a standard amount per individual as a cost of doing business. The Department believed that use of a standard reimbursement rate (standard) for the cost of providing day care would eliminate the burden on day care providers to document itemized costs incurred for producing the income and would increase the benefits for households that fail to adequately document business costs. Use of a standard would also decrease the amount of time needed to process self-employment cases of this type and reduce payment errors.

Under the proposed provision, State agencies would be required to inform households of their opportunity to verify actual meal expenses and use actual costs if higher than the fixed amount. When establishing a standard amount, State agencies would take into account the differences in cost for full-day and part-day care. Households that are reimbursed for the cost of meals provided to individuals in their care, for example through the FCS Child and Adult Care Food Program, would not be able to claim the standard but could claim actual expenses that exceed the amount of their reimbursement.

One commenter found the preamble of the proposed rule confusing, noting that it begins and ends with a discussion of the cost of providing meals by day care providers, yet in the body refers to allowing use of a standard for ''determining self-employment expenses,'' which the commenter interpreted to mean that all allowable costs could be standardized if they are incurred as a cost of doing business. The commenter asked if that is what the Department is proposing.

The proposed standard is intended to cover only the costs of meals and not other self-employment expenses that the household providing in-home day care may incur. The purpose of the provision was to incorporate into regulations a procedure found to be effective through the Department's waiver process. As noted in the proposed rule, several State agencies were granted waivers to use a flat dollar amount, such as $5 a day, or to use the FCS Child and Adult Care Food Program reimbursement rates, to cover the cost of meals provided by day care households to individuals in their care instead of requiring the households to document actual meal costs. Those State agencies have reported that use of a standard benefits households by eliminating the need for them to keep extensive records on actual meal costs. It is also advantageous to the State agencies as it eliminates the need for workers to verify actual meal costs.

Another commenter thought that the proposed rule was unclear as to whether or not the standard reimbursement amount had to be established separately for food stamps or whether a reimbursement amount approved for use in a State public assistance (PA) program could be used without separate approval from FCS.

It is the Department's intention that State agencies develop their own meal cost standards. State agencies are free, therefore, to use the same standard as is used in their PA or general assistance programs. Furthermore, State agencies do not need to seek departmental approval of the standard they choose to use. State agencies must, however, inform households of their right to verify actual meal expenses and use those actual costs if they exceed the standard amount.

Two commenters requested further clarification on the Department's recommendation in the proposed rule that, when establishing a standard amount, State agencies take into account the differences in cost for full-day and part-day care. One commenter wanted to know if it meant that the State agency should have separate standards for part-day and full-day care. The other requested a definition of part-time.

As noted above, the Department intends for State agencies to develop their own meal standards. The statement in the proposed rule that State agencies consider the differences in part-day and full-day care when setting

the standard was, therefore, only a recommendation, and the Department is not requiring State agencies to differentiate between the two when creating a standard. Consequently, the Department is not providing a definition of part-day care, but will leave it up to State agency discretion.

The comments received on the proposed provision requested clarification of the preamble and not changes to the regulatory language of the provision. Therefore, the Department is adopting the proposed amendment to 7 CFR 273.11(b)(2) as final without change.

Exemption from Providing a Notice of Adverse Action—7 CFR 273.13(b)

Current regulations at 7 CFR 273.13(a) require State agencies to send a notice of adverse action (NOAA) to a household prior to any action to reduce or terminate the household's benefits, except as provided in 7 CFR 273.13(b). That section does not include an exception to the NOAA requirements when mail sent to a household is returned with no known forwarding address. The AFDC regulations at 45 CFR 205.10(a)(4)(ii) do not require an advance notice of adverse action in this situation. In the proposed rule, the Department suggested adding an exemption from sending a NOAA if agency mail has been returned with no known forwarding address. Since it is unlikely that the Postal Service can deliver a NOAA mailed to an address which is no longer correct, it is reasonable to specify in regulations that no notice is required if delivery cannot be reasonably expected.

Four commenters supported the proposed provision. One commenter noted, however, that although the cited AFDC regulation does not require advance notice if delivery cannot be reasonably expected, notice is still required.

The Department does not believe it is necessary to send a notice to an address known to be incorrect. A recipient whose benefits were reduced or terminated and who did not receive a notice would still be entitled to a fair hearing in accordance with 7 CFR 273.15 and restoration of benefits, as provided in 7 CFR 273.17. However, to allow State agencies to use the same procedure for food stamps and AFDC, we are adding a new paragraph (c) to 7 CFR 273.13 to provide that State agencies may at their option send an adequate notice to households whose mail has been returned with no known forwarding address.

Recertification—7 CFR 273.14

In the January 11, 1995 rule, the Department proposed several changes to current regulations at 7 CFR 273.14 which govern recertification procedures. The Department proposed a general reorganization of the section in order to provide a clearer expression of recertification requirements. The Department also proposed several changes in recertification procedures which it believed would provide State agencies with more flexibility when recertifying households. Each proposed change is discussed in detail below.

The Department received two general comments on the proposed changes to 7 CFR 273.14, one positive and one negative. One commenter strongly supported all the proposed changes, believing that they will simplify and improve the recertification process. The other commenter thought that the proposed changes clearly added unfunded Federal mandates. The commenter wrote that the discussion in the preamble implied that States were being given options for handling the recertification process but in the proposed regulations only a single process which encourages the State agency to send a recertification form, an interview appointment letter, and a statement of needed verification with each notice of expiration was stated. The commenter felt that the procedure was an unfunded Federal mandate and was counter productive to any automated system based on interactive interviews. The commenter thought that if a State was currently experiencing no problems with the recertification process, there was no need to complicate the process by developing an additional form to use just for recertification or by establishing different procedures.

It was not the Department's intention in the proposed rule to impose new recertification requirements on State agencies. The proposed procedures, which were drawn from State agency waiver requests, were meant only as options which State agencies can employ to simplify the recertification process. State agencies which do not find the proposed options beneficial should not employ them.

1. Reorganization

In the January 11, 1995 rule, the Department proposed to reorganize 7 CFR 273.14 in an attempt to provide a clearer expression of the recertification requirements. Revised section 273.14(a) contained general introductory statements regarding actions the household and the State agency must take to ensure that eligible households receive uninterrupted benefits. Revised section 273.14(b) contained the requirements for the notice of expiration, the recertification form, the interview and verification. Revised section 273.14(c) contained the filing deadlines for timely applications for recertification. Current sections 273.14(d), (e), and (f) were revised into two new sections 7 CFR 273.14 (d) and (e). New section 7 CFR 273.14(d) combined all of the provisions of the previous sections relating to timeframes for providing benefits when all processing deadlines are met. New section 7 CFR 273.14(e) addressed situations in which the household or the State agency fail to meet processing deadlines.

The Department received no comments on the proposed structural revision of the section and is retaining it in the final rule.

2. Recertification Forms

In the January 11, 1995 rule, the Department proposed to revise 7 CFR 273.14(b)(2) to allow State agencies the option of using a modified application form for recertifying households. This form could be used only for those households which apply for recertification before the end of their current certification period. The State agency would be required to devise its own form, and would have to include on it the information required by 7 CFR 273.2(b)(1)(i), (ii), (iii), (iv) and (v). This information is required by section 11(e)(2) of the Act, 7 U.S.C. 2020(e)(2), and apprises applicants of their rights and responsibilities under the Program. The information regarding the Income and Eligibility Verification System in 7 CFR 273.2(b)(2) may be provided on a separate form. In accordance with section 11(e)(2) of the Act, which requires that the Department approve all deviations from the uniform national food stamp application, all recertification forms would have to be approved by FCS before they could be used.

The Department received three comments on the recertification form proposal. One commenter supported the provision. Another commenter thought that the proposed regulatory language made it mandatory for the State agency to use a recertification form and did not allow the option to use the regular initial application at recertification. The Department had intended to indicate that the proposed recertification form is meant as an option for State agencies and is not mandatory. The Department is revising the proposed language at 7 CFR 273.14(b)(2)(i) to clarify this.

The third commenter noted that if a recertification form is to be used for joint food stamps/SSI processing in accordance with 7 CFR 273.2(k), State agencies must obtain SSA approval as well as FCS approval before using the form. The Department agrees and is revising the proposed language at 7 CFR 273.14(b)(2)(i) to clarify this.

2–A. Face-to-Face Interviews

Under current regulations, State agencies are required to conduct face-to-face interviews with households applying for recertification. In the January 11, 1995 rule, we proposed to revise 7 CFR 273.14(b)(3) to allow State agencies to interview by telephone any household that has no earned income and whose members are all elderly or disabled. We also proposed to give State agencies the option of conducting a face-to-face interview only once a year with a food stamp household that receives PA or GA. The interview could be conducted at the same time the household is scheduled for its PA or GA face-to-face interview. At any other recertification during that time period, the State agency may choose to interview the household by telephone. However, the State agency would be required to grant a face-to-face interview to any household that requests one.

We received nine comments on the proposed provision. One commenter thought that the definition of ''stable households'' in the proposed rule was unclear, and that the final rule should specify the households for which telephone interviews may be conducted.

The Department believes that the proposed regulatory language at 7 CFR 273.14(b)(3) clearly specified those categories of households for which the face-to-face interview could be waived. It may be waived for those households that have no earned income and in which all members are elderly or disabled, and it may be waived for food stamp households also receiving PA or GA. In the latter case, a household would have to receive at least one face-to-face interview a year.

Another commenter thought that the provision allowing State agencies to interview by telephone any household that has no earned income and whose members are all elderly or disabled is more restrictive than, and contradicts, the Food Stamp Act. Section 11(e)(2) of the Food Stamp Act, 7 U.S.C. 2020(e)(2), currently provides for the waiver of the face-to-face interview on a case-by-case basis for those households for whom a visit to the food stamp office would be a hardship. The commenter apparently thought that the Department was proposing to prohibit such waivers in the future. That is not the Department's intent.

Current food stamp regulations at 7 CFR 273.2(e) provide for a waiver of the face-to-face interview requirement for hardship reasons. The Department did not propose in the January 11, 1995 rule to change that provision, and, in fact, proposed to include a reference to it in 7 CFR 273.14(b)(3). The commenter may have been confused by the discussion on Federal Register page 2709 of the proposed rule concerning a suggestion made previously by State agencies to allow case workers to determine on a case-by-case basis which households needed to be interviewed. The Department rejected the suggestion, believing that providing for the waiving of face-to-face interviews based on a caseworker's personal determination that a face-to-face interview is not necessary in a particular case could compromise the right to equal treatment guaranteed all food stamp recipients under section 11(c) of the Act, 7 U.S.C. 2020(c).

One commenter thought that the option to waive face-to-face interviews should be extended to households subject to monthly reporting and retrospective budgeting (MRRB). The commenter thought that since the circumstances of these households are updated monthly, a telephone interview should be sufficient to complete the household's recertification determinations.

Another commenter thought that the option to waive face-to-face interviews should also be extended to include group living arrangement residents even if they have earned income. The commenter explained that the resident is usually not able to complete the application process so it is completed by the authorized representative (AR) (usually the case manager) and all verifications are submitted by the AR. One case manager is responsible for numerous residents, and face-to-face interviews are very time consuming both for them and State staff. The commenter thought that since all the information is received through the AR for those households, a telephone interview of the AR should be sufficient.

The Department agrees that the changes suggested by the above two commenters have merit. However, the Department believes that such significant changes to current regulations should be proposed in order to give interested parties the opportunity to comment. Therefore, the Department is not adopting either suggestion at this time, but will consider both in future rulemakings.

Two commenters addressed the proposal to allow one face-to-face interview a year for joint food stamp/PA households. One commenter wrote to support the provision. The other suggested that the Department make food stamps and PA/GA requirements even more compatible by allowing mail-in recertifications when the household is not due for its face-to-face interview.

The Department agrees with the commenter that it is advantageous to both households and State agencies to have food stamp and PA requirements align as closely as possible. Therefore, the Department is revising 7 CFR 273.14(b)(3)(ii) to allow for mail-in recertifications at any recertification in an annual period in which the household does not receive a face-to-face interview for PA or GA. Telephone interviews should be conducted with the household if any of its reported circumstances are questionable.

The remaining three commenters objected to the proposed provision at 7 CFR 273.14(b)(3). That provision required the State agency to reschedule a missed interview if the interview had been scheduled before the household had submitted a recertification form. One of the commenters noted that under current regulations at 7 CFR 273.14(c)(2), it is the household's responsibility to reschedule a missed interview even if that interview was scheduled prior to the household filing a timely application.

The Department agrees with the commenters that the proposed provision added an additional recertification requirement, and is therefore making no change to current requirements at 7 CFR 273.14(c)(2).

3. Verification

Current regulations at 7 CFR 273.14(c)(3) give State agencies the option of establishing timeframes for submission of verification information. To increase consistency with procedures for initial applications and provide sufficient time for households to obtain the required verification information, the Department proposed in the January 11, 1995 rule to revise 7 CFR 273.14(b) to add a new paragraph (4) to require State agencies to allow households a minimum of 10 days in which to satisfy verification requirements.

One commenter noted that there is no provision for the situation in which the required 10-day period would extend beyond the end of the certification period. Current regulations at 7 CFR 273.14(d)(2) require that if a household's eligibility is not determined by the end of the current certification

period because of the time period allowed for submitting missing verification, and the household is subsequently found eligible, it must receive an opportunity to participate within 5 working days after submission of the required verification. The Department is revising the proposed regulations at 7 CFR 273.14(b)(4) to include this requirement.

The Department also proposed to simplify the requirements for verifying information at recertification. Current regulations at 7 CFR 273.2(f)(8)(i) require State agencies to verify at recertification a change in income or actual utility expenses if the source has changed or the amount has changed by more than $25. State agencies are also required to verify previously unreported medical expenses and total recurring medical expenses which have changed by $25 or more. Section 273.2(f)(8)(i) also prohibits State agencies from verifying income, total medical expenses, or actual utility expenses which are unchanged or have changed by $25 or less, unless the information is ''incomplete, inaccurate, inconsistent, or outdated.'' The Department proposed to amend 7 CFR 273.2(f)(8)(i)(A) and (C), and (ii) to replace the terms ''incomplete, inaccurate, inconsistent or outdated'' with the term ''questionable.''

One commenter was concerned that as a result of the change in wording, State agencies might interpret ''questionable'' to mean something other than incomplete, inaccurate, inconsistent, or outdated, and that they will not reverify information that falls in these categories.

To avoid any possibility that incomplete, inaccurate, inconsistent, or outdated information might not be reverified, the Department has decided not to make the proposed change.

4. Filing Deadline

Currently, 7 CFR 273.14(c)(1) provides that for monthly reporting households the deadline for filing an application for recertification is the normal date for filing a monthly report. Several State agencies have requested that, for the purpose of administrative efficiency and flexibility, the Department make the filing deadline for monthly reporters the 15th of the last month of the household's certification period (recertification month), the same as it is for nonmonthly reporting households. We proposed in the January 11, 1995 publication to revise 7 CFR 273.14(c) to give State agencies the option of making the filing deadline for monthly reporters either the 15th of the recertification month or the household's normal date for filing a monthly report. The Department received no comments on the proposed provision and is adopting it as final.

5. Early Denial

Under current regulations at 7 CFR 273.14(a)(3), a State agency may deny a household's application for recertification at the time a household's certification period expires or within 30 days after the date the application was filed as long as the household has had adequate time to satisfy verification requirements. Under current regulations at 7 CFR 273.14(a)(2), a household that fails to attend a scheduled interview or to provide required verification information within required timeframes loses its right to uninterrupted benefits but cannot be denied eligibility at that time, unless the household fails to cooperate or the household's certification period has elapsed.

In the January 11, 1995 rule, the Department proposed a change in provisions for handling the recertification of households which do not comply with the requirements for interviews or verification. We proposed to include in revised section 7 CFR 273.14(e) a provision to allow State agencies the option of denying eligibility to households as soon as a failure to comply with the interview or verification requirement occurs. The State agency would be required to send the household a denial notice informing it that its application for recertification has been denied. The notice would have to contain the reason for the denial, the action required to continue participation, the date by which it must be accomplished, the consequences of failure to comply, notification that the household's participation will be reinstated if it complies within 30 days after its application for recertification was filed and is found eligible, and that the household has a right to a fair hearing. If the household subsequently requests an interview or provides the required verification information within 30 days of the date of its recertification application and is found eligible, the State agency must reinstate the household. Under this option, benefits must be provided within 30 days after the application for recertification was filed or within 10 days of the date the household provided the required verification information or completed the interview, whichever is later.

The Department received four comments on the proposed provision. Two commenters support the proposal, and the other two suggested that it apply at initial certification as well as at recertification.

The Department is not adopting the commenters' recommendation. The commenters' suggestion goes beyond the provision of the proposed rule. As noted earlier in this section, the Department believes that significant changes to current regulations should be proposed in order to provide an opportunity for public comment. Therefore, the Department is not accepting the commenter's suggestion at this time but will consider it for future rulemakings.

6. Proration of Benefits at Recertification

Current regulations at 273.14(f)(2) provide that any application for recertification not submitted in a timely manner shall be treated as an application for initial certification, except for verification requirements. If the household does not submit a recertification form before its certification period expires, the household's benefits for the first month of the new certification period are prorated in accordance with 7 CFR 273.10(a)(2). However, section 13916 of the 1993 Leland Act amended section 8(c)(2)(B) of the Act, 7 U.S.C. 2017(c)(2)(B), to eliminate proration of first month's benefits if a household is recertified for food stamps after a break in participation of less than one month. Therefore, if a household submits an application for recertification after its certification period has expired, but before the end of the month after expiration, the application is not considered an initial application and the household's benefits for that first month are not prorated. In the final rule, we proposed to include this new provision in revised section 7 CFR 273.14(e)(2)(ii). The Department received no comments on the proposed provision and is adopting it as final.

7. Expedited Service

Section 11(e)(9) of the Act, 7 U.S.C. 2020(e)(9), requires State agencies to provide coupons within 5 days after the date of application to destitute migrant or seasonal farmworkers; households with gross incomes less than $150 a month and liquid resources that do not exceed $100; homeless households; and households whose combined gross income and liquid resources are less than their monthly rent, mortgage and utilities.

In the January 11, 1995 rule, the Department proposed to eliminate expedited service at recertification. The Department proposed to create a new section, 7 CFR 273.14(f), which would clarify that households which punctually apply for recertification, or which apply late but within the

certification period, are not entitled to expedited service. However, households which do not apply for recertification until the month after their certification period ends are entitled to expedited service if they are otherwise eligible for such service. A conforming amendment to 7 CFR 273.2(i)(4)(iv) was also proposed.

The Department received eight comments on the proposed rule. Three commenters supported the proposed provision. Four commenters strongly opposed granting expedited service to households that reapply in the month immediately following the month of their last certification period. The commenters thought that households would use the provision to manipulate State agencies' issuance systems in order to receive benefits earlier than usual.

The Department believes there is no substantive evidence to support the commenters' claim that households will purposefully fail to submit timely applications for recertification in order to receive their first month's benefits earlier than they would under their normal issuance cycle. Anecdotal evidence received from State agencies which have applied for waivers of the expedited service requirement indicates rather that households prefer to receive their allotments for the first month of their new certification period in their normal issuance cycle. The Department, therefore, is making no change to the proposed provision and is adopting it as final.

The last commenter requested clarification on the interaction of the rules on expedited service, proration, and combined allotments. At initial application, a household eligible for expedited service must receive such service. If the household applies before the 15th of the month, it receives prorated benefits for the first month if eligible (assuming it timely satisfies all application requirements). If the household applies after the 15th of the month and is eligible for expedited service, it must receive a prorated allotment for the first month and a full allotment for the second month within the 5-day expedited service timeframe with postponed verification, if necessary, to meet the expedited timeframe.

At recertification, if the household timely reapplies for benefits and timely satisfies all application processing requirements, it is not eligible for expedited service, its benefit for the first month is not prorated, and it does not receive a combined allotment. If the household reapplies in the month after the end of its last certification period, it must receive expedited service if eligible in accordance with the provisions of 7 CFR 273.14(f) finalized in this rule. In accordance with the new provisions at 7 CFR 273.14(e)(2)(ii), the household's benefits for the first month cannot be prorated if it satisfies all application processing requirements on a timely basis.

A household that reapplies after the 15th of the month in the month following the end of its last certification period, is not eligible for a combined allotment. Section 8(c)(3)(B) of the Act requires a combined allotment when a household that is entitled to expedited service applies after the 15th day of the month in lieu of its ''initial'' allotment and its regular allotment for the following month. Section 8(c)(2)(B) defines an initial month as one that follows any period of more than one month in which the household was not participating in the program. Since the month in which the household is reapplying is not an initial month, a combined allotment would not be required. The household, if eligible, would be entitled to a full month's allotment for the month in which it reapplies.

8. Miscellaneous Provisions

One commenter thought that the proposed requirement at 7 CFR 273.14(d)(2) that households be notified of their eligibility or ineligibility by the end of their current certification period places a hardship on State agency staff. The commenter thought that, in administering the rule, consideration must be given to weekends, holidays, and mail time which shortens the timeframe for making an eligibility determination. The commenter thought the regulation should be amended to require that the eligibility determination be made by the end of the current certification period.

The proposed provision represented no change from existing policy as currently contained at 7 CFR 273.14(d)(2) and 273.10(g)(1)(iii). The Department understands the difficulty State agencies may encounter when determining household eligibility. However, the Department believes households should be informed of their eligibility prior to the end of their certification period to ensure that they are aware of their eligibility or ineligibility prior to the date they expect to receive their next allotment. The Department is adopting the proposed provision as final.

The same commenter also suggested a change to the proposed regulations at 7 CFR 273.14(e)(1). Those regulations state that households which have submitted an application for recertification in a timely manner but, due to State agency error, are not determined eligible in sufficient time to provide for issuance of benefits by the household's next normal issuance date shall receive an immediate opportunity to participate. The commenter thought that the phrase ''immediate opportunity to participate'' should be replaced with a definitive timeframe. The commenter felt that consideration must be given to different issuance systems and the need to mail benefits so that the phrase ''immediate opportunity'' has widely varying interpretations.

Because issuance systems vary between States, the Department is unsure of what timeframe would be appropriate. The Department does not wish to impose a timeframe that would be burdensome for many State agencies to meet, or a timeframe that is too broad and therefore further penalizes households who have not been given an opportunity to participate within their normal issuance cycle because of an error on the part of the State agency. For these reasons, the Department is not adopting the commenter's suggestion but is adopting the proposed provision as final. This will allow the State agency more flexibility to fit the requirement into its issuance system.

Retrospective Suspension—7 CFR 273.21(n)

Current regulations at 7 CFR 273.21(n) allow State agencies the option of suspending issuance of benefits to a household that becomes ineligible for one month. State agencies that do not choose suspension must terminate a household's certification when it becomes ineligible, and the household must reapply to reestablish its eligibility for the Program.

The need for suspension typically occurs when a household paid weekly (or biweekly) receives an extra check in a month with five (or three) paydays. Under current policy, State agencies which opt to suspend rather than terminate a household's participation must anticipate prospectively which month the household will be ineligible and suspend the household's participation for that month.

In the proposed rule, the Department proposed to amend 7 CFR 273.21(n) to grant State agencies the option of suspending households either retrospectively or prospectively. Under retrospective suspension, the State agency suspends the household for the issuance month corresponding to the budget month in which the household receives the extra check. This is the method used for suspension in the

AFDC program. The proposed rule required that the option to suspend and the method of suspension must be applied Statewide.

The Department received four comments on the proposed provision. Two were supportive of the provision, while two requested that the option of suspending issuance of benefits to a household that becomes ineligible for one month, which is currently limited to retrospectively budgeted households, be extended to prospectively budgeted households.

The Department agrees with the commenters that it is desirable to allow suspension for prospectively budgeted households, for it would eliminate the burden on both the household and State agency caused by the current requirement to reapply and complete the entire application process if eligibility is terminated for one month. Therefore, in addition to adopting the proposed amendment to 7 CFR 273.21(n) as final, we are also adding a provision to 7 CFR 273.12(c)(2) to allow State agencies to suspend prospectively budgeted households that become ineligible for one month for any reason.

Technical Amendments

In a final rule published June 9, 1994, titled ''Technical Amendments to Various Provisions of Food Stamp Rules'', the Department made several corrections to existing regulations. It has come to our attention that additional changes are needed. Therefore, we are making the following additional technical amendments:

1. Paragraphs (A) and (B) in 7 CFR 272.1(g)(74)(ii)(A) are redesignated as paragraphs (*1*) and (*2*).

2. The comma after the word ''elderly'' is being removed from 7 CFR 273.1(e)(1)(i).

3. 7 CFR 273.20(a) is being revised to complete the removal of references to Wisconsin, which formerly participated in the cash-out demonstration project and to revise the heading of the section.

4. In the fourth sentence of 7 CFR 278.1(h), the spelling of the word ''applicant'' is corrected.

5. A typographical error in the first sentence of 7 CFR 279.3(a) is corrected.

The Department is also taking this opportunity to amend 7 CFR 273.4(a) to remove paragraphs (9) and (11). These paragraphs were added to the regulations by a final rule published May 29, 1987 (52 FR 20058) to implement provisions of the Immigration Reform and Control Act (IRCA) of 1986.

Paragraph (9) provides that aliens granted lawful temporary resident status at least 5 years prior to applying for food stamps and who subsequently gained lawful permanent resident status would be able to participate if otherwise eligible. The program to grant lawful temporary resident status to certain aliens has now ended and this paragraph is therefore obsolete. Aliens granted lawful temporary resident status under the provision have now either been granted lawful permanent resident status or are ineligible for benefits.

Paragraph (11) provides that an alien who is lawfully admitted for temporary residence as an additional special agricultural worker (Replenishment Agricultural Worker) as of October 1, 1989 through September 30, 1993, in accordance with section 210A(a) of the Immigration and Nationality Act, is not prohibited from participating in the Food Stamp Program. A final rule published by the Immigration and Naturalization Service (INS) at 59 FR 24031, May 10, 1994, amended the INS regulations to remove provisions pertaining to the RAW program because the program expired at the end of Fiscal Year 1993. The preamble to the regulation indicates that in the 3 years during which the program was in place, no immigration benefits were ever granted through the RAW program. Since the program has now expired, the provision is obsolete and is being removed from 7 CFR 273.4(a).

Conforming amendments are also being made to redesignate 7 CFR 273.4(a)(10) as 273.4(a)(9), to remove the reference to 7 CFR 273.4(a)(9) from 7 CFR 273.4(a)(2), and to change the reference in 7 CFR 273.2(f)(1)(ii)(A) and (D) from 7 CFR 273.4(a)(11) to 273.4(a)(9). These technical amendments are effective 30 days after publication.

Implementation

Except for the provisions of 7 CFR 273.14(b)(2), this final rule is effective November 18, 1996 and must be implemented no later than May 1, 1997. The provisions of 7 CFR 273.14(b)(2) allowing use of a modified recertification form must be approved by OMB under the Paperwork Reduction Act of 1995 before they can become effective. We will publish a notice in the Federal Register announcing the effective date when OMB approval is received. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implements the provision prior to the required implementation date. The current caseload shall be converted to these provisions following implementation at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date the State agency implemented the provision prior to the required implementation date. If for any reason a State agency fails to implement by the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later, but for no more than 12 months in accordance with § 273.17(a). For quality control purposes, any variances resulting from the implementation of the rule shall be excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii) and 7 U.S.C. 2025(c)(3)(A).

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries—general line and wholesaler, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, General line—wholesalers, Groceries, Groceries—retail.

Accordingly, 7 CFR Parts 272, 273, 278, and 279 are amended as follows:

1. The authority citation for Parts 272, 273, 278, and 279 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1:

a. Paragraph (g)(74) is amended by redesignating paragraphs (g)(74)(ii)(A)(A) and (B) as (g)(74)(ii)(A)(*1*) and (*2*).

b. a new paragraph (g)(147) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation* * * *

(147) *Amendment No. 364.* Except for the provisions of § 273.14(b)(2), the provisions of *Amendment No. 364* are effective November 18, 1996 and must be implemented no later than May 1, 1997. The effective date and implementation date of the provisions of § 273.14(b)(2) will be announced in a document in the Federal Register. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implements the provision prior to the required implementation date. The current caseload shall be converted to these provisions following implementation at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to required implementation date or the date the State agency implemented the provision prior to the required implementation date. If for any reason a State agency fails to implement by the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later, but for no more than 12 months in accordance with § 273.17(a) of this chapter. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii) of this chapter and 7 U.S.C. 2025(c)(3)(A).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

3. In § 273.1, paragraph (e)(1)(i) is amended by removing the comma after the word ''elderly''.

4. In § 273.2:

a. A new paragraph (c)(2)(iii) is added.

b. Paragraph (f)(1)(ii)(A) is amended by removing the reference ''(a)(11)'' and adding the reference ''(a)(9)'' in its place.

c. Paragraph (f)(1)(ii)(D) is amended by removing the reference ''§ 273.4(a)(8) through (11)'' and adding in its place the reference ''§ 273.4(a)(8) and (a)(9)''.

d. A new sentence is added to the end of paragraph (f)(1)(v).

e. Paragraph (g)(2) is redesignated as paragraph (g)(3) and a new paragraph (g)(2) is added.

f. The third and fourth sentences of the undesignated paragraph following paragraph (i)(4)(i)(B) are amended by removing the word ''first'' wherever it appears in both sentences and adding in its place the word ''second''.

g. The fourth sentence of the undesignated paragraph following paragraph (i)(4)(i)(B) is further amended by adding the words '', except that households with a newborn may have up to 6 months following the month the baby was born to supply an SSN or proof of an application for an SSN for the newborn in accordance with § 273.6(b)(4)'' before the period.

h. The third sentence of paragraph (i)(4)(iii) introductory text is amended by adding the words ''and is certified for the month of application and the subsequent month only'' before the words ''to submit a second application''.

i. Paragraphs (i)(4)(iii)(A), (i)(4)(iii)(B), and (i)(4)(iii)(C) are revised.

j. New paragraphs (i)(4)(iii)(D) and (i)(4)(iii)(E) are added.

k. A new sentence is added at the end of paragraph (i)(4)(iv).

The additions and revisions read as follows:

§ 273.2. Application processing.

* * * * *

(c) *Filing an application.* * * *

(2) *Contacting the food stamp office.* * * *

(iii) In State agencies that elect to have Statewide residency, as provided in § 273.3, the application processing timeframes begin when the application is filed in any food stamp office in the State.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(v) *Social security numbers.* * * * A completed SSA Form 2853 shall be considered proof of application for an SSN for a newborn infant.

* * * * *

(g) *Normal processing standard.* * * *

(2) *Combined allotments.* Households which apply for initial month benefits (as described in § 273.10(a)) after the 15th of the month, are processed under normal processing timeframes, have completed the application process within 30 days of the date of application, and have been determined eligible to receive benefits for the initial month of application and the next subsequent month, may be issued a combined allotment at State agency option which includes prorated benefits for the month of application and benefits for the first full month of participation. The benefits shall be issued in accordance with § 274.2(c) of this chapter.

* * * * *

(i) *Expedited service.* * * *

(4) *Special procedures for expediting service.* * * *

(iii) * * *

(A) For households applying on or before the 15th of the month, the State agency may assign a one-month certification period or assign a normal certification period. Satisfaction of the verification requirements may be postponed until the second month of participation. If a one-month certification period is assigned, the notice of eligibility may be combined with the notice of expiration or a separate notice may be sent. The notice of eligibility must explain that the household has to satisfy all verification requirements that were postponed. For subsequent months, the household must reapply and satisfy all verification requirements which were postponed or be certified under normal processing standards. If the household does not satisfy the postponed verification requirements and does not appear for the interview, the State agency does not need to contact the household again.

(B) For households applying after the 15th of the month, the State agency may assign a 2-month certification period or a normal certification period of no more than 12 months. Verification may be postponed until the third month of participation, if necessary, to meet the expedited timeframe. If a two-month certification period is assigned, the notice of eligibility may be combined with the notice of expiration or a separate notice may be sent. The notice of eligibility must explain that the household is obligated to satisfy the verification requirements that were postponed. For subsequent months, the household must reapply and satisfy the verification requirements which were postponed or be certified under normal processing standards. If the household does not satisfy the postponed verification requirements and does not attend the interview, the State agency does not need to contact the household again. When a certification period of longer than 2 months is assigned and verification is postponed, households must be sent a notice of eligibility advising that no benefits for the third month will be issued until the postponed verification requirements are satisfied. The notice must also advise the household that if the verification process results in changes in the household's eligibility or level of benefits, the State agency will act on those changes without advance notice of adverse action.

(C) Households which apply for initial benefits (as described in § 273.10(a)) after the 15th of the month, are entitled to expedited service, have completed the application process, and have been determined eligible to receive benefits for the initial month and the next subsequent month, shall receive a combined allotment consisting of prorated benefits for the initial month of application and benefits for the first full month of participation within the expedited service timeframe. If necessary, verification shall be postponed to meet the expedited timeframe. The benefits shall be issued in accordance with § 274.2(c) of this chapter.

(D) The provisions of paragraph (i)(4)(iii)(C) of this section do not apply to households which have been determined ineligible to receive benefits for the month of application or the following month, or to households which have not satisfied the postponed verification requirements. However, households eligible for expedited service may receive benefits for the initial month and next subsequent month under the verification standards of paragraph (i)(4) of this section.

(E) If the State agency chooses to exercise the option to require a second application in accordance with paragraph (i)(4)(iii) of this section and receives the application before the third month, it shall not deny the application but hold it pending until the third month. The State agency will issue the third month's benefits within 5 working days from receipt of the necessary verification information but not before the first day of the month. If the postponed verification requirements are not completed before the end of the third month, the State agency shall terminate the household's participation and shall issue no further benefits.

(iv) * * * The provisions of this section shall not apply at recertification if a household reapplies before the end of its current certification period.

* * * * *

5. In § 273.3:

a. The existing undesignated paragraph is designated as paragraph (a), and is further amended by removing the first sentence and adding two sentences in its place.

b. Paragraph (b) is added.

The additions read as follows:

§ 273.3 Residency.

(a) A household shall live in the State in which it files an application for participation. The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. * * *

(b) When a household moves within the State, the State agency may require the household to reapply in the new project area or it may transfer the household's casefile to the new project area and continue the household's certification without reapplication. If the State agency chooses to transfer the case, it shall act on changes in household circumstances resulting from the move in accordance with § 273.12(c) or § 273.21. It shall also ensure that duplicate participation does not occur in accordance with § 272.4(f) of this chapter, and that the transfer of a household's case shall not adversely affect the household.

§ 273.4 [Amended]

6. In § 273.4:

a. paragraph (a)(2) is amended by removing the words ''paragraphs (a)(8) or (a)(9)'' and adding in their place the words ''paragraph (a)(8)''.

b. paragraphs (a)(9) and (a)(11) are removed and paragraph (a)(10) is redesignated as paragraph (a)(9).

7. In § 273.6, a new paragraph (b)(4) is added to read as follows:

§ 273.6 Social security numbers.

* * * * *

(b) *Obtaining SSNs for food stamp household members.* * * *

(4) If the household is unable to provide proof of application for an SSN for a newborn, the household must provide the SSN or proof of application at its next recertification or within 6 months following the month the baby is born, whichever is later. If the household is unable to provide an SSN or proof of application for an SSN at its next recertification within 6 months following the baby's birth, the State agency shall determine if the good cause provisions of paragraph (d) of this section are applicable.

* * * * *

8. In § 273.8, the first sentence of paragraph (e)(2) is revised to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(2) Household goods, personal effects, the cash value of life insurance policies, one burial plot per household member, and the value of one bona fide funeral agreement per household member, provided that the agreement does not exceed $1,500 in equity value, in which event the value above $1,500 is counted. * * *

* * * * *

9. In 273.10:

a. The second sentence of paragraph (a)(1)(iv) is amended by adding the words ''second full'' after the words ''benefits for the''.

b. Paragraph (a)(1)(iv) is further amended by removing the third and fourth sentences.

c. Paragraph (c)(2)(iii) is revised.

d. A new sentence is added at the end of paragraph (c)(3)(ii).

e. Paragraph (f)(3) is revised.

f. The first sentence of paragraph (g)(2) is amended by adding the words ''if the household has complied with all recertification requirements'' after ''current certification period''.

The additions and revision read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(c) *Determining income.* * * *

(2) *Income only in month received.* * * *

(iii) Households receiving income on a recurring monthly or semimonthly basis shall not have their monthly income varied merely because of changes in mailing cycles or pay dates or because weekends or holidays cause additional payments to be received in a month.

(3) *Income averaging.* * * *

(ii) * * * Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

* * * * *

(f) *Certification periods.* * * *

(3)(i) Households in which all members are included in a single PA or GA grant shall have their food stamp recertifications at the same time they are redetermined for PA or GA. Definite food stamp certification periods must be assigned to these households in accordance with the provisions of this section, however, those periods may be shortened or extended in order to align the food stamp recertification date with the PA or GA redetermination date. The household's food stamp certification period can only be extended when the household is initially approved for PA/GA. The food stamp certification period may be extended up to 12 months to align the food stamp certification period with the PA/GA redetermination period. If the household's certification period is extended, the State agency shall notify the household of the changes in its certification period. At the end of the extended certification period the household must be sent a Notice of Expiration and must be recertified before being eligible for further food stamp assistance, even if the PA or GA

redetermination is not set to expire. If the household's certification period is shortened, the State agency shall send it a notice of expiration which informs the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. The notice of expiration shall also explain to the household that its certification period is expiring in order that it may be recertified for food stamps at the same time that it is redetermined for PA or GA.

(ii) Households in which all members receive assistance under Title XIX of the Social Security Act or other medical assistance program may have their food stamp recertification at the same time they are redetermined for assistance under Title XIX or other medical assistance program. The State agency must follow the same requirements that apply in paragraph (f)(3)(i) of this section.

* * * * *

10. In § 273.11:

a. The heading of paragraph (b) and the heading of the introductory text of paragraph (b)(1) are revised;

b. The introductory text of paragraph (b)(1)(ii) is revised;

c. Paragraph (b)(1)(ii)(B) is amended by removing the period at the end of the paragraph and adding in its place a semicolon and the word ''or''.

d. A new paragraph (b)(1)(ii)(C) is added;

e. A new paragraph (b)(2) is added.

The revisions and additions read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(b) *Households with income from boarders and day care.*

(1) *Households with boarders.* * * *

(ii) *Cost of doing business.* In determining the income received from boarders, the State agency shall exclude the portion of the boarder payment that is a cost of doing business. The amount allowed as a cost of doing business shall not exceed the payment the household receives from the boarder for lodging and meals. Households may elect one of the following methods to determine the cost of doing business:

* * * * *

(C) A flat amount or fixed percentage of the gross income, provided that the method used to determine the flat amount or fixed percentage is objective and justifiable and is stated in the State's food stamp manual.

* * * * *

(2) *Income from day care.* Households deriving income from day care may elect one of the following methods of determining the cost of meals provided to the individuals:

(i) Actual documented costs of meals;

(ii) A standard per day amount based on estimated per meal costs; or

(iii) Current reimbursement amounts used in the Child and Adult Care Food Program.

* * * * *

11. In § 273.12, the text of paragraph (c)(2) is redesignated as (c)(2)(i) and a new paragraph (c)(2)(ii) is added to read as follows:

§ 273.12 Reporting changes.

* * * * *

(c) *State agency action on changes.* * * *

(2) *Decreases in benefits.* * * *

(ii) The State agency may suspend a household's certification prospectively for one month if the household becomes temporarily ineligible because of a periodic increase in recurring income or other change not expected to continue in the subsequent month. If the suspended household again becomes eligible, the State agency shall issue benefits to the household on the household's normal issuance date. If the suspended household does not become eligible after one month, the State agency shall terminate the household's certification. Households are responsible for reporting changes as required by paragraph (a) of this section during the period of suspension.

* * * * *

12. In § 273.13, a new paragraph (c) is added to read as follows:

§ 273.13 Notice of adverse action.

* * * * *

(c) *Optional notice.* The State agency may, at its option, send the household an adequate notice as provided in paragraph (b)(3) of this section when the household's address is unknown and mail directed to it has been returned by the post office indicating no known forwarding address.

13. § 273.14 is revised to read as follows:

§ 273.14 Recertification

(a) *General.* No household may participate beyond the expiration of the certification period assigned in accordance with § 273.10(f) without a determination of eligibility for a new period. The State agency must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods. Households must apply for recertification and comply with interview and verification requirements.

(b) *Recertification process.* (1) *Notice of expiration.* (i) The State agency shall provide households certified for one month or certified in the second month of a two-month certification period a notice of expiration (NOE) at the time of certification. The State agency shall provide other households the NOE before the first day of the last month of the certification period, but not before the first day of the next-to-the-last month. Jointly processed PA and GA households need not receive a separate food stamp notice if they are recertified for food stamps at the same time as their PA or GA redetermination.

(ii) Each State agency shall develop a NOE. A model form (Form FCS–439) is available from FCS. The NOE must contain the following:

(A) The date the certification period expires;

(B) The date by which a household must submit an application for recertification in order to receive uninterrupted benefits;

(C) The consequences of failure to apply for recertification in a timely manner;

(D) Notice of the right to receive an application form upon request and to have it accepted as long as it contains a signature and a legible name and address;

(E) Information on alternative submission methods available to households which cannot come into the certification office or do not have an authorized representative and how to exercise these options;

(F) The address of the office where the application must be filed;

(G) The household's right to request a fair hearing if the recertification is denied or if the household objects to the benefit issuance;

(H) Notice that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration;

(I) Notice that failure to attend an interview may result in delay or denial of benefits; and

(J) Notice that the household is responsible for rescheduling a missed interview and for providing required verification information.

(iii) To expedite the recertification process, State agencies are encouraged to send a recertification form, an interview appointment letter, and a statement of needed verification required by § 273.2(c)(5) with the NOE.

(2) *Application form.* (i) The State agency shall provide each household with an application form to obtain all information needed to determine eligibility and benefits for a new certification period. The State agency may use either its regular application as defined in § 273.2(b) or a special recertification form. The recertification form can only be used by households which are applying for recertification before the end of their current certification period. Recertification forms must be approved by FCS as required by § 273.2(b)(3). Recertification forms used for joint food stamps/SSI processing must be approved by SSA in accordance with § 273.2(k)(1)(i)(B). The recertification form must elicit from the household sufficient information regarding household composition, income and resources that, when added to information already contained in the casefile, will ensure an accurate determination of eligibility and benefits. The information required by § 273.2(b)(1)(i),(b)(1)(ii), (b)(1)(iii), (b)(1)(iv) and (b)(1)(v) must be included on the recertification form. The information regarding the Income and Eligibility Verification System in § 273.2(b)(2) may be provided on a separate form. A combined form for PA and GA households may be used in accordance with § 273.2(j). Monthly reporting households shall be recertified as provided in § 273.21(q). State agencies may use the same form for households required to report changes in circumstances and monthly reporting households.

(ii) The State agency may request that the household bring the application form to the interview or return the form by a specified date (not less than 15 days after receipt of the form).

(3) *Interview.* (i) As part of the recertification process, the State agency shall conduct a face-to-face interview with a member of each household. The face-to-face interview may be waived in accordance with § 273.2(e). The State agency may also waive the face-to-face interview for a household that has no earned income if all of its members are elderly or disabled. The State agency has the option of conducting a telephone interview or a home visit for those households for whom the office interview is waived. However, a household that requests a face-to-face interview must be granted one.

(ii) If a household receives PA/GA and will be recertified for food stamps more than once in a 12-month period, the State agency may choose to conduct a face-to-face interview with that household only once during that period. The face-to-face interview shall be conducted at the same time that the household receives a face-to-face interview for PA/GA purposes. At any other recertification during that year period, the State agency may interview the household by telephone, conduct a home visit, or recertify the household by mail.

(iii) The State agency may schedule the interview prior to the application filing date, provided that the household's application is not denied at that time for failure to appear for the interview. The State agency shall schedule the interview on or after the date the application was filed if the interview has not been previously scheduled, or the household has failed to appear for any interviews scheduled prior to this time and has requested another interview. State agencies shall schedule interviews so that the household has at least 10 days after the interview in which to provide verification before the certification period expires.

(4) *Verification.* Information provided by the household shall be verified in accordance with § 273.2(f)(8)(i). The State agency shall provide the household a notice of required verification as provided in § 273.2(c)(5) and notify the household of the date by which the verification requirements must be satisfied. The household must be allowed a minimum of 10 days to provide required verification information. Any household whose eligibility is not determined by the end of its current certification period due to the time period allowed for submitting any missing verification shall receive an opportunity to participate, if eligible, within 5 working days after the household submits the missing verification.

(c) *Timely application for recertification.* (1) Households reporting required changes in circumstances that are certified for one month or certified in the second month of a two-month certification period shall have 15 days from the date the NOE is received to file a timely application for recertification.

(2) Other households reporting required changes in circumstances that submit applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification.

(3) For monthly reporting households, the filing deadline shall be either the 15th of the last month of the certification period or the normal date for filing a monthly report, at the State agency's option. The option chosen must be uniformly applied to the State agency's entire monthly reporting caseload.

(4) For households consisting only of SSI applicants or recipients who apply for food stamp recertification at SSA offices in accordance with § 273.2(k)(1), an application shall be considered filed for normal processing purposes when the signed application is received by the SSA.

(d) *Timely processing.* (1) Households that were certified for one month or certified for two months in the second month of the certification period and have met all required application procedures shall be notified of their eligibility or ineligibility. Eligible households shall be provided an opportunity to receive benefits no later than 30 calendar days after the date the household received its last allotment.

(2) Other households that have met all application requirements shall be notified of their eligibility or ineligibility by the end of their current certification period. In addition, the State agency shall provide households that are determined eligible an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period.

(e) *Delayed processing.* (1) *Delays caused by the State agency.* Households which have submitted an application for recertification in a timely manner but, due to State agency error, are not determined eligible in sufficient time to provide for issuance of benefits by the household's next normal issuance date shall receive an immediate opportunity to participate upon being determined eligible, and the allotment shall not be prorated. If the household was unable to participate for the month following the expiration of the certification period because of State agency error, the household is entitled to restored benefits.

(2) *Delays caused by the household.* (i) If a household does not submit a new application by the end of the certification period, the State agency must close the case without further action.

(ii) If a recertification form is submitted more than one month after the timely filing deadline, it shall be treated the same as an application for initial certification. In accordance with § 273.10(a)(1)(ii), the household's benefits shall not be prorated unless there has been a break of more than one month in the household's certification.

(iii) A household which submits an application by the filing deadline but does not appear for an interview scheduled after the application has been filed, or does not submit verification within the required timeframe, loses its right to uninterrupted benefits. The

State agency has three options for handling such cases:

(A) Send the household a denial notice as soon as the household either fails to appear for an interview or fails to submit verification information within the required timeframe. If the interview is completed, or the household provides the required verification information within 30 days of the date of application and is determined eligible, the household must be reinstated and receive benefits within 30 calendar days after the application was filed or within 10 days of the date the interview is completed or required verification information is provided, whichever is later. In no event shall a subsequent period's benefits be provided before the end of the current certification period.

(B) Deny the household's recertification application at the end of the last month of the current certification period. The State agency may on a Statewide basis either require households to submit new applications to continue benefits or reinstate the households without requiring new applications if the households have been interviewed and have provided the required verification information within 30 days after the applications have been denied.

(C) Deny the household's recertification request 30 days after application. The State agency may on a Statewide basis either require households to submit new applications to continue benefits or reinstate households without requiring new applications if such households have been interviewed and have provided the required verification within 30 days after the applications have been denied.

(f) *Expedited service.* A State agency is not required to apply the expedited service provisions of § 273.2(i) at recertification if the household applies for recertification before the end of its current certification period.

14. In § 273.20, the section heading and paragraph (a) are revised to read as follows:

§ 273.20 SSI cash-out.

(a) *Ineligibility.* No individual who receives supplemental security income (SSI) benefits and/or State supplementary payments as a resident of California is eligible to receive food stamp benefits. The Secretary of the Department of Health and Human Services has determined that the SSI payments in California have been specifically increased to include the value of the food stamp allotment.

* * * * *

15. In § 273.21, paragraph (n)(1) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB)

* * * * *

(n) *Suspension.* * * *

(1) * * * The State agency may on a Statewide basis either suspend the household's certification prospectively for the issuance month or retrospectively for the issuance month corresponding to the budget month in which the noncontinuing circumstance occurs.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

§ 278.1 [Amended]

16. In § 278.1, the fourth sentence of paragraph (h) is amended by removing the word ''appliant'' and adding the word ''applicant'' in its place.

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

§ 279.3 [Amended]

17. In § 279.3, the introductory text of paragraph (a) is amended by removing the word ''A'' and adding the word ''An'' in its place.

Dated: September 27, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–26069 Filed 10–16–96; 8:45 am]

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Thursday
October 17, 1996

Part III

Department of Housing and Urban Development

Office of the Secretary

Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) Proprietary Data Submission; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4139–N–01]

Final Order—Proprietary Data Submitted by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of final order.

SUMMARY: This Notice sets forth a Final Order of the Secretary of Housing and Urban Development which provides that certain loan-level mortgage data submitted by the Federal National Mortgage Association (''Fannie Mae'', ''Government-Sponsored Enterprise'', or ''GSE'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac'', ''Government-Sponsored Enterprise'', or ''GSE'') to HUD is proprietary and shall not be made available to the public. The Appendix to this Order sets forth the loan-level data elements that the Secretary has determined to be proprietary and, therefore, to be withheld from public use. In accordance with this Order, certain proprietary loan-level data elements are recoded, adjusted, or categorized in ranges to protect proprietary information and to permit the release of information to the public.

EFFECTIVE DATE OF THE FINAL ORDER: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Tasker, Director, Office of Government-Sponsored Enterprises, Department of Housing and Urban Development, Room 6154, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–2224. For questions on data or methodology, Harold Bunce, Director, Financial Institutions Regulation, Room 8204, at the same address, telephone (202) 708–2770; for legal questions, Kenneth A. Markison, Assistant General Counsel GSE/RESPA, Room 9262, at the same address, telephone (202) 708–3137 (these are not toll-free numbers). For hearing- and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The Final Order

By the authority vested in me as Secretary of Housing and Urban Development, under sections 1323 and 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act, 12 U.S.C. 4543 and 4546, (''the Act''), I have determined that certain loan-level mortgage data elements, as detailed in the attached Appendix and contained in the annual loan-level data files that have been and will be submitted by Fannie Mae and Freddie Mac to the Department of Housing and Urban Development in accordance with sections 309(m) of the Fannie Mae Charter Act, 12 U.S.C. 1723a(m), and 307(e) of the Freddie Mac Act, 12 U.S.C. 1456(e), shall be treated as proprietary information. Accordingly, under the authority of section 1326 of the Act, I hereby order that these proprietary data elements be withheld from public disclosure in accordance with section 1323 of the Act and HUD regulations.

The Appendix further identifies data elements that are not proprietary information or that lose their proprietary character when categorized in ranges, adjusted, or recoded in other ways. The data so identified in the Appendix shall be made available for public use under section 1323 of the Act and HUD regulations.

This Final Order does not extend to aggregated information on activities in 1993–95 previously submitted by the GSEs in the Annual Housing Activities Reports, the Mortgage Reports required under 24 C.F.R. 81, subpart E, and the Quarterly and Annual Reports on Interim Housing Goals required under the Notices of Interim Housing Goals, 58 Fed. Reg. 53048, 53071 and 53072, 53095 (Oct. 13, 1993), and the regulation extending such goals into 1995, 59 Fed. Reg. 61504 (Nov. 30, 1994). The information contained in those reports is not proprietary and is available to the public.

This Final Order is not applicable to aggregated information on activities in 1996 and thereafter that has been or will be submitted by the GSEs in the Annual Housing Activities Reports and the Mortgage Reports. The nature of this reporting is being determined and the extent to which this information will be deemed proprietary will be determined at an appropriate future date.

This Final Order concerns whether loan-level data elements are proprietary. It is not applicable to aggregations of information above the loan-level that the Department may produce for various reasons, including fulfilling its responsibilities to inform the public about the GSEs' activities.

The background and terms of this Final Order are set forth below.

Background

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, enacted as Title XIII of the Housing and Community Development Act of 1992, (Pub. L. 102–550, approved October 28, 1992), codified generally at 12 U.S.C. 4501–4561 (''the Act''), requires the Secretary of Housing and Urban Development to establish and monitor the performance of Fannie Mae and Freddie Mac in meeting annual goals for mortgage purchases on housing for low- and moderate-income families, housing located in central cities, rural areas, and other underserved areas, and special affordable housing, *i.e.*, housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families. The Secretary established housing goals for 1993 and subsequent years and implemented HUD's regulatory authorities respecting the GSEs in a series of regulations. 58 Fed. Reg. 53047–96 (Oct. 13, 1993) (1993–94 housing goals); 59 Fed. Reg. 61504–06 (Nov. 30, 1994) (1995 housing goals); 24 CFR Part 81 (including housing goals for 1996 and beyond).

HUD requires that the GSEs submit quarterly and annually certain data and written information on their mortgage purchases to assist HUD in monitoring the GSEs' performance under the goals and to satisfy the requirements of subsections 309 (m)–(n) of the Fannie Mae Charter Act, 12 U.S.C. 1723a (m)–(n), and subsections 307 (e)–(f) of the Freddie Mac Act, 12 U.S.C. 1456 (e)–(f). These provisions mandate that the GSEs collect, maintain and provide to the Secretary data relating to their mortgages on single family and multifamily housing, and sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act further require that the GSEs report aggregate information on their mortgages to both the Secretary and Congress.

For 1996 and future years, HUD requires each GSE to provide extensive data and other information on mortgages purchased in two forms—Annual Housing Activities Reports (AHARs) that discuss each GSE's performance under the housing goals, and quarterly Mortgage Reports that include: aggregate data on mortgage purchases; and, in the second and fourth quarter reports, loan-level computerized data files that provide details on each mortgage purchased by each GSE. The data required in the loan-level data files include, for example, for each mortgage purchased by the GSEs: the borrower(s') annual income, race, and gender; census tract location; other geographic identifiers; loan-to-value (LTV) ratio; number of units; owner-occupancy status; and other details on the

mortgage, the property, and the borrower(s). The information required for the Mortgage Reports includes, for example, aggregate data concerning: the amount of mortgage purchases that qualify towards each housing goal, classified by number of units and dollar volume; borrower's income; race; location of property; and various other categories.

Statutory Requirements and Legislative History Regarding Proprietary Data

Section 1323 of the Act, 12 U.S.C. 4543, provides that the Secretary shall make available to the public the data submitted by the GSEs in the data reports required under section 309(m) of the Fannie Mae Charter Act and section 307(e) of the Freddie Mac Act, *except* the data that the Secretary determines by regulation or order pursuant to section 1326, 12 U.S.C. 4546, is proprietary information. Section 1323(b)(2) of the Act, 12 U.S.C. 4543(b)(2), specifically provides that the Secretary may not restrict access to data consisting of income, census tract location, race, and gender of mortgagors of single family properties. Section 1326 provides that the Secretary may by regulation or order provide that certain information shall be treated as proprietary and, pending the issuance of a final decision on the matter, the information may not be disclosed. The legislative history of the Act provides that ''* * * every effort should be made to provide public disclosure of the information required to be collected and/or reported to the regulator consistent with the exemption for proprietary data * * *.'' S. Rep. 102–282, 102d Cong., 2d Sess. 40 (1992).

Previous Orders

The Secretary issued a Temporary Order in 1994 providing that certain GSE data was proprietary. 59 Fed. Reg. 29514 (June 7, 1994). The Secretary issued a second Order concerning Proprietary Data of the GSEs as Appendix F of the final GSE regulation, 60 Fed. Reg. 61846, 62001–05 (Dec. 1, 1995), (hereinafter ''second Order'').

The second Order identified certain data as proprietary and specified that certain data elements would be categorized into ranges to permit data to be released to the public in a form useful to the public. Under that Order, the GSEs' multifamily loan-level data was to be disclosed in two separate files—a Census Tract File and a National File. Similarly, under that Order, the single family loan-level data was to be disclosed in three separate files—a Census Tract File, including geographic data, and two National Files (National File A and National File B) that excluded the census tract location and other geographic descriptors. The main reason for creating the single family National File A was to develop a method for disclosing LTV ratios in a manner that did not reveal LTV information on mortgage purchases at the census tract level. Both GSEs requested proprietary treatment for LTV information at the census tract level. National File B was to make available to the public occupancy information indicating whether a dwelling unit was owner-occupied, a rental unit in an owner-occupied property, or a rental unit in an investment property. In creating two National Files HUD minimized the likelihood that certain variables can be linked across the National and Census Tract files so that the census tract location could be associated with variables such as LTVs, purpose of the mortgage (purchase, refinancing, or second mortgage), or the date of mortgage notes, which are also proprietary at the census tract level. This multi-file data base structure protects proprietary information, such as information that could reveal local marketing strategies of the GSEs, while permitting the public access to a wide range of GSE data.

Changes Included in This Order

Based on further review of the second Order and comments provided by the GSEs, the Secretary determined that the issuance of a new Order was required. The Secretary has therefore determined to withhold additional data elements and to reconfigure the files to protect proprietary information from disclosure at the census tract level.

By letters dated October 1, 1996, the Secretary has provided notice to the GSEs that certain data elements for which the GSEs requested proprietary treatment are not proprietary information, and that such data shall be made available in the public use data base. Those letters also provided that the mortgage data in the public use data base will not be released to the public for ten working days. Accordingly, the public use data base will be available to the public beginning October 17, 1996.

Each of the changes made under this Order, as compared to the second Order, are discussed below. The discussion of the rationale for certain of these changes is limited because further discussion could reveal proprietary information of the GSEs.

1. The single family Census Tract File remains a mortgage-based file, as specified in the second Order. The one change in this file's structure relative to the second Order is the addition to the public use data base of the Geographically Targeted Indicator (field number 55).

2. In the single family Census Tract File, the Area Median Family Income (field number 16) and the Borrower(s) Annual Income (field number 15) will be recoded in some cases to protect proprietary information. In these cases, the Area Median Family Income (field number 16) as submitted by the GSEs will be recoded to the area median income in the year of the mortgage's acquisition by the GSE. In these cases, the Borrower(s) Annual Income (field number 15) also will be adjusted to reflect acquisition year dollars, to maintain the same Borrower Income Ratio (field number 17) between the Borrower(s) Annual Income and the Area Median Family Income. In certain cases where these adjustments cannot be made, in order to protect proprietary information, the Area Median Family Income (field number 16) and the Borrower Income Ratio (field number 17) will be treated as proprietary. In these cases, the Borrower(s) Annual Income (field number 15) will not be adjusted.

3. Single family National File A has been changed to contain only data on owner-occupied one-unit properties, rather than data on all single family properties. The purpose of National File A is to provide LTV ratios in a form that protects proprietary information (that is, the disclosure of LTV ratios with a census tract identifier), while providing researchers with useful information on LTVs for owner-occupied one-unit properties.

4. Single family National File B has been reconfigured from a mortgage file that displays data for up to four units in a single record to a file that displays data for individual units. Accordingly, the affordability information in fields 56, 61, and 66 in the second Order will appear in field 51. The purpose of this change is to protect proprietary information on the GSEs' purchases of mortgages on two- to four-unit properties which is proprietary while permitting the public access to useful information on one- to four-unit GSE mortgage purchases.

5. Single family National File B makes available to the public a revised Borrower Income Ratio (field number 17) for rental dwelling units, which converts the reported rent (the greater of fields number 52 and 53) into an affordability percentage, comparable to the affordability determination in field number 17 for owner-occupants. Inasmuch as data in fields number 52 and 53 are withheld as proprietary, this adjustment of field number 17 for rental

units provides the public access to affordability information. In the second Order, the Secretary determined that field number 17 as then recoded was not proprietary for National File B.

6. Single family National File B makes available to the public information on the date of the mortgage note, by indicating (in field number 20) whether a mortgage was originated in the same year as purchased by the GSE or originated in a previous year. In the second Order, the Secretary determined that the date of the mortgage note would be made available only in the single family National File B by indicating whether the mortgage was seasoned or unseasoned. The new approach under this Order to field number 20 protects proprietary information, is consistent with the approach taken under the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.*, and allows users of the public use data base to compare GSE data with HMDA data.

7. The Occupancy Code (field number 47) has been revised in the single family National File B. As reported by the GSEs, field number 47 classifies properties as either Principal Residence/Owner Occupied properties or Second Home properties. In National File B, field number 47 will classify each unit as either Owner-Occupied, a Rental Unit in an Owner-Occupied Property, or a Rental Unit in an Investment Property. Field number 50 contains the same owner-occupancy information made available to the public in field number 47 and, therefore, field number 50 is not proprietary.

8. In the multifamily files, the Type of Seller Institution (field number 33) will be made available to the public only in the Census Tract File. Because the release of this information in both the National File and the Census Tract File could permit the release of other proprietary information at the loan-level, the type of seller institution is proprietary information as included in the multifamily National File and will not be made available to the public in that file.

9. The multifamily Tenant Income Indicator (field number 49), which indicates whether the affordability of a particular unit is determined by using the income of the tenant(s) or the rent for the unit, is being made available to the public only in the National File. It is proprietary information as included in the Census Tract File because its release may permit identification of other proprietary information. For 1993–95, this data has been provided only by Freddie Mac.

Conclusion

The Department is complying fully with the requirements of the Act and will not restrict access to the data submitted to HUD by the GSEs, consisting of income, census tract location, race, and gender of mortgagors of single family properties. Also, in accordance with the Act, the Secretary has considered the GSEs' assertions that certain data is proprietary information and has concluded that revising the second Order is necessary to protect proprietary information.

The Act's legislative history noted that ''public access and disclosure of information is a key tool for permitting appropriate public scrutiny and oversight of the activities of the [GSEs] and in evaluating possible improvements in housing finance markets.'' S. Rep. 102–282, 102d Cong., 2d Sess. 44 (1992). On the other hand, the Act also protects proprietary data and information from release. Sections 1323 and 1326 of the Act, 12 U.S.C. 4543 and 4546. The Secretary has considered these matters in issuing this Final Order.

Expiration and Modification of this Final Order

This Final Order supersedes the second Order, 60 Fed. Reg. 61846, 62001–05 (Dec. 1, 1995), and shall be effective until such time as it is determined necessary or appropriate to withdraw or modify it.

Dated: October 1, 1996.

Henry G. Cisneros,

Secretary.

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APPENDIX

GSE MORTGAGE DATA AND AHAR INFORMATION:

PROPRIETARY INFORMATION/PUBLIC-USE DATA

Notes: The following matrices distinguish proprietary from public-use mortgage data elements. A "YES" designation indicates that the data element is proprietary and not included in the public use data base in the format indicated. A "NO", "NO, Added field", "Yes, but recode", and "YES, but redefine and recode as" indicate that the data element is included in the public use data base. Certain data are coded as missing or not available either becasue the data was not submitted or because the data is proprietary.

GSE Single-Family Mortgage Data
Owner- and Renter-Occupied 1- to 4-Unit Properties
Proprietary Information/Public-Use Data

The "Census Tract File" contains mortgage-level data on all single-family properties.
The "National File A" contains mortgage-level data on owner-occupied 1-unit properties.
The "National File B" contains unit-level data on all single-family properties.

#	Field Description	Values	Census Tract File	National File A	National File B
0	Agency Flag	1=Fannie Mae 2=Freddie Mac	NO	NO	NO
1	Loan Number		Yes, but recode as a Random Number*	Yes, but recode as a Random Number*	Yes, but recode as a Random Number*
2	US Postal State	0=Missing	NO	YES	YES
3	US Postal Zip Code		YES	YES	YES
4	MSA Code	0=Missing	NO	YES	YES
5	Place Code - FIPS		YES	YES	YES
6	County - 1990 Census	0=Missing	NO	YES	YES
7	Census Tract/BNA - 1990 Census	0=Missing	NO	YES	YES
8**	Census Tract Geographic Designation	1=Tract Entirely Within Central City 2=Tract Entirely Outside Central City 3=Central City Split Tract 9=Not Able To Code	NO	YES	YES
9**	Central City Flag 1	9999=Not Able To Code	NO	YES	YES
10**	Central City Flag 2	9998=Not Available 9999=Not Applicable	NO	YES	YES
11	1990 Census Tract - Percent Minority	9999=Not Available	NO	YES, but recode as: 1=0- <10% 2=10- <30% 3=30- 100% 9=Missing	YES, but recode as: 1=0-<10% 2=10- <30% 3=30- 100% 9=Missing
12	1990 Census Tract - Median Income	999999=Not Available	NO	YES	YES
13	1990 Local Area Median Income	999999=Not Available	NO	YES	YES
14	Tract Income Ratio	9999=Not Applicable	NO	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing
15	Borrower(s) Annual Income	999999=Not Available	YES, but recode in terms of dollars for year of acquisition.	YES	YES
16	Area Median Family Income	999999=Not Available or Withheld as Proprietary	YES, but recode in terms of dollars for year of acquisition.	YES	YES
17***	Borrower Income Ratio	9999=Not Applicable, Not Available, or Withheld as Proprietary	YES, but recode proprietary data as 9999.	YES, but recode as: 1=0- <=60% 2=60 - <=100% 3= >100 9=Not Applicable	YES, but redefine and recode as:*** 1=0- <=60% 2=60- <=100% 3= >100 9=Not Applicable
18	Acquisition UPB		YES, but recode as: Actual values for < $200,000 999998= >=$200,000 999999=Missing	YES	YES
19	LTV at Origination	999=Not Applicable	YES	YES, but recode as: 1=0- <=60% 2=60- <=80% 3=80- <=90% 4=90- <=95% 5= > 95% 9=Missing	YES
20	Date of Mortgage Note		YES	YES	YES, but recode as: 1=Originated same calendar year as acquired 2=Originated prior to calendar year of acquisition 9=Missing
21	Date of Acquisition		YES	YES	YES
22	Purpose of Loan	1=Purchase 2=Refinancing 3=Second Mortgage 9=Not Applicable	YES	YES	NO
23	Cooperative Unit Mortgage	1=Yes 2=No 8=Not Available 9=Not Applicable	YES	YES	YES

#	Field Description	Values	Census Tract File	National File A	National File B
24**	Refinancing Loan from Own Portfolio	1=Yes 2=No 9=Not Applicable	YES	YES	YES
25	Special Affordable, Seasoned Loan: Are Proceeds Recycled?	1=Yes 2=No 9=Not Applicable	YES	YES	YES
26	Product Type	01=Fixed Rate 02=ARM 03=Balloon 04=GPM/GEM 05=Reverse Annuity Mortgage 06=Other 07...98=List Other Distinct Products 99=Not Available	YES	YES	YES
27	Federal Guarantee	1=FHA/VA 2=FMHA-Guaranteed Rural Housing Loan 3=HECMs 4=No Federal Guarantee 5=Title 1-FHA	YES	NO	NO
28	RTC/FDIC	1=Yes 2=No	YES	YES	YES
29	Term of Mortgage at Origination		YES	YES	YES
30	Amortization Term	998=Non-Amortizing Loan 999=Not Available	YES	YES	YES
31****	Lender Institution Name		YES	YES	YES
32****	Lender City		YES	YES	YES
33****	Lender State		YES	YES	YES
34	Type of Seller Institution	1=Mortgage Company 2=SAIF Insured Depository Institution 3=BIF Insured Depository Institution 4=NCUA Insured Credit Union 5=Other	YES	YES	NO
35	Number of Borrowers	99=Missing	NO	YES	YES
36	First-Time Home Buyer	1=Yes 2=No 9=Not Available	NO	YES	YES
37	Mortgage Purchased under GSE's Community Lending Program	1=FNMA's Community Homebuyer Program 2=FNMA's Community Lending Other 3=FNMA's Other Housing Impact Programs OR 1=FHLMC's Affordable Gold 2=FHLMC's Alternative Qualifying 9=Not Applicable (either GSE)	YES	YES	YES
38	Acquisition Type	1=Cash 2=SWAP 3=Other 4=Credit Enhancement 5=Bond or Debt Purchase 6=REMIC 7=Reinsurance 8=Risk Sharing 9=REIT	YES	YES	YES
39	GSE's Real Estate Owned	1=Yes 2=No 3=Not Available	YES	YES	YES
40**	Public Subsidy Programs	1=Federal only 2=State or Local only 3=Other/Private Subsidy only 4=Federal and State or Local 5=Federal and Other 6=State or Local and Other 7=Federal, State or Local and Other 9=Data Not Provided	YES	YES	YES
41	Borrower Race or National Origin	1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Information Not Provided by Applicant In Mail or Telephone Application 8=Not Applicable 9=Not Available	NO	YES, but recode to combine Fields 41 and 42: 1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Borrower/Co-Borrower Are Different 9=Original 7, 8, 9	YES, but recode to combine Fields 41 and 42: 1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Borrower/Co-Borrower Are Different 9=Original 7, 8, 9
42	Co-Borrower Race or National Origin	1=American Indian or Alaskan Native 2=Asian or Pacific Islander 3=Black 4=Hispanic 5=White 6=Other 7=Information Not Provided by Applicant In Mail or Telephone Application 8=Not Applicable 9=Not Available	NO	YES	YES

#	Field Description	Values	Census Tract File	National File A	National File B
43	Borrower Gender	1=Male 2=Female 3=Information Not Provided by Applicant In Mail or Telephone Application 4=Not Applicable 9=Not Available	NO	YES, but recode to combine Fields 43 and 44: 1=Male(s) only 2=Female(s) Only 3=Male and Female 9=Original 3, 4, 9	YES, but recode to combine Fields 43 and 44: 1=Male(s) only 2=Female(s) Only 3=Male and Female 9=Original 3, 4, 9
44	Co-Borrower Gender	1=Male 2=Female 3=Information Not Provided by Applicant In Mail or Telephone Application 4=Not Applicable 9=Not Available	NO	YES	YES
45	Age of Borrower	999=Data Not Provided	NO	YES	YES
46	Age of Co-Borrower	999=Data Not Provided	NO	YES	YES
47*****	Occupancy Code	1=Principal Residence/Owner-Occupied 2=Second Home 3=Investment Property (Rental) 9=Not Available	YES	YES	YES, but redefine and recode as:***** 1=Owner-Occupied 2=Rental Unit in an Owner-Occupied Property 3=Investment Property (Rental) 9=Not Available
48	Number of Units		YES	NO	NO
49	Unit - Number of Bedrooms	99=Data Not Provided	YES	YES	YES
50	Unit - Owner Occupied	1=Yes 2=No	YES	YES	NO
51	Unit - Affordability Category	1=Low-Income Family (but not Very Low-Income) in a Low-Income Area 2=Very Low-Income Family, in a Low-Income Area 3=Very Low-Income Family, Not in a Low-Income Area 4=Other 9=Not Available 0=Missing	YES	NO	NO
52	Unit - Reported Rent Level	99999=Not Applicable	YES	YES	YES
53	Unit - Reported Rent Plus Utilities	99999=Not Applicable	YES	YES	YES
54	Fannie Mae Exclusions	1=Excluded from Goal Reporting	YES	YES	YES
55****	Geographically Targeted Indicator	1=Yes 2=No 9=Not Applicable	NO, Added Field	NO, Added Field	NO, Added Field

* Different random number on each of the tract and national files.

** Not applicable to 1996 and beyond data sets. Central city is as defined by the Office of Management and Budget.

*** The borrower income ratio field is defined for rental units on National File B to reflect the affordability of units based on rent data submitted by the GSEs to the Secretary.

**** Not applicable to 1993-1995 data sets.

***** National File B is recoded so that rental and owner-occupied units of 2-4 unit properties can be distinguished.

GSE Multifamily Mortgage Data
Property Level
Proprietary Information/Public-Use Data

The "Census Tract File" contains mortgage-level data on all multifamily properties.
The "National File" consists of two parts: one part contains mortgage level data and the other consists of unit-class-level data for all multifamily properties.

#	Field Description	Values	Census Tract File	National File
0	Agency Flag	1=Fannie Mae 2=Freddie Mac	NO	NO
1	Loan Number		Yes, but recode as a Random Number*	Yes, but recode as a Random Number*
2	US Postal State	0=Missing	NO	YES
3	US Postal Zip Code		YES	YES
4	MSA Code	0=Missing	NO	YES
5	Place Code - FIPS		YES	YES
6	County - 1990 Census	0=Missing	NO	YES
7	Census Tract/BNA - 1990 Census	0=Missing	NO	YES
8**	Census Tract Geographic Designation	1=Tract Entirely Within Central City 2=Tract Entirely Outside Central City 3=Central City Split Tract 9=Not Able To Code	NO	YES
9**	Central City Flag 1	9999=Not Able To Code	NO	YES
10**	Central City Flag 2	9998=Not Available 9999=Not Applicable	NO	YES
11	1990 Census Tract - Percent Minority	9999=Not Available	NO	YES, but recode as: 1=0-<10% 2=10- <30% 3=30- 100% 9=Missing
12	1990 Census Tract - Median Income	999999=Not Available	NO	YES
13	1990 Local Area Median Income	999999=Not Available	NO	YES
14	Tract Income Ratio	9999=Not Applicable	NO	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing
15	Area Median Family Income	999999=Not Available	NO	YES
16	Affordability Category	1= >=20% are especially-low-income and <40% are very-low-income 2= <20% & >=40% 3= >=20% & >=40% 4= <20% & <40% 8=Not Available 9=Not Eligible 0=Missing	YES	NO
17	Acquisition UPB		YES, but recode as: 1= <= $500,000 2= $500,000-<=$1m 3= $1m-<=$2m 4= $2m-<=$4m 5= > $4m 9=Missing	YES
18	Participation Percent		YES	YES
19	Date of Mortgage Note		YES	YES
20	Date of Acquisition		YES	YES
21	Purpose of Loan	1=Purchase 2=Refinancing 3=New Construction 4=Rehabilitation 9=Not Applicable	YES	NO
22	Cooperative Project Loan	1=Yes 2=No 8=Not Available 9=Not Applicable	YES	YES
23**	Refinancing Loan from Own Portfolio	1=Yes 2=No 9=Not Applicable	YES	YES
24	Special Affordable, Seasoned Loan: Are Proceeds Recycled?	1=Yes 2=No 9=Not Applicable	YES	YES
25	Mortgagor Type	1=Individual 2=For Profit Entity 3=Nonprofit Entity 4=Public Entity 5=Other	YES	YES

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#	Field Description	Values	Census Tract file	National File
26	Term of Mortgage at Origination		YES	YES
27	Loan Type	1=Fixed Rate 2=ARM 3=GPM	YES	YES
28	Construction Loan	1=Yes 2=No	YES	YES
29	Amortization Term	998=Non-Amortizing Loan 999=Not Available	YES	YES
30***	Lender Institution		YES	YES
31***	Lender City		YES	YES
32***	Lender State		YES	YES
33	Type of Seller Institution	1=Mortgage Company 2=SAIF Insured Depository Institution 3=BIF Insured Depository Institution 4=NCUA Insured Credit Union 5=Other	NO	YES
34	Government Insurance	1=Yes 2=No 3=FHA Risk Sharing 9=Not Available	YES	NO
35	FHA Risk Share Percent		YES	YES
36	Acquisition Type	1=Cash 2=Swap 3=Other 4=Credit Enhancement 5=Bond/Debt Purchased 6=REMIC 7=Reinsurance 8=Risk Sharing 9=REIT	YES	YES
37	GSE Real Estate Owned	1=Yes 2=No 3=Not Available	YES	YES
38	Public Subsidy Program	1=Federal only 2=State or Local only 3=Other/Private Subsidy only 4=Federal and State or Local 5=Federal and Other 6=State or Local and Other 7=Federal, State or Local and Other 9=Data Not Provided	YES	YES
39	Total Number of Units		YES	NO
40**	Special Affordable - 45 Percent	0=Missing or Not Applicable	YES	NO
41**	Special Affordable - 55 Percent	0=Missing or Not Applicable	YES	NO
42	Fannie Mae Exclusions	1=Excluded from Goal Reporting	YES	YES
43***	Geographically Targeted Indicator	1=Yes 2=No 9=Not Applicable	NO, Added Field	NO, Added Field

* Different random numbers on tract and national files
** Not applicable to 1996 and beyond data sets.
*** Not applicable to 1993-1995 data sets.

GSE Multifamily Mortgage Data
Unit Class Level
Proprietary Information/Public-Use Data

0	Agency Flag		YES	NO
1	Loan Number		YES	Yes, but recode as a Random Number****
44	Unit Type XX-Number of Bedrooms		YES	YES, but recode as: 1=0-1 Bedroom 2= 2 or more Bedrooms
45	Unit Type XX-Number of Units		YES	NO
46	Unit Type XX-Average Rent Level		YES	YES
47	Unit Type XX-Average Rent Plus Utilities		YES	YES
48	Unit Type XX-Affordability Level		YES	YES, but recode as: 1=0- <=50% 2=50- <=60% 3=60- <=80% 4=80- <=100% 5= > 100% 9=Not Available
49	Unit Type XX-Tenant Income Indicator	0=No or Not Provided 1=Yes	YES	NO

**** This number will match the property level random number on the national file.

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Conditional residents and fiancees; persons admitted for permanent residence; status adjustment; comments due by 10-21-96; published 8-20-96

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Indian Tribes program; violent offender incarceration and truth-in-sentencing; comments due by 10-24-96; published 9-24-96

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Eurocopter Deutschland model MBB-BK helicopters; comments due by 10-25-96; published 8-26-96
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Motor carrier replacement information/registration system; comments due by 10-25-96; published 8-26-96
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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 543/P.L. 104–283
National Marine Sanctuaries Preservation Act (Oct. 11, 1996; 110 Stat. 3363)

H.R. 1514/P.L. 104–284
Propane Education and Research Act of 1996 (Oct. 11, 1996; 110 Stat. 3370)

H.R. 1734/P.L. 104–285
To reauthorize the National Film Preservation Board, and for other purposes. (Oct. 11, 1996; 110 Stat. 3377)

H.R. 1823/P.L. 104–286
To amend the Central Utah Project Completion Act to direct the Secretary of the Interior to allow for prepayment of repayment contracts between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and November 26, 1985, and for other purposes. (Oct. 11, 1996; 110 Stat. 3387)

H.R. 2297/P.L. 104–287
To codify without substantive change laws related to transportation and to improve the United States Code. (Oct. 11, 1996; 110 Stat. 3388)

H.R. 2579/P.L. 104–288
United States National Tourism Organization Act of

1996 (Oct. 11, 1996; 110 Stat. 3402)

H.R. 2779/P.L. 104–289

Savings in Construction Act of 1996 (Oct. 11, 1996; 110 Stat. 3411)

H.R. 3005/P.L. 104–290

National Securities Markets Improvement Act of 1996 (Oct. 11, 1996; 110 Stat. 3416)

H.R. 3159/P.L. 104–291

To amend title 49, United States Code, to authorize appropriations for fiscal years 1997, 1998, and 1999 for the National Transportation Safety Board, and for other purposes. (Oct. 11, 1996; 110 Stat. 3452)

H.R. 3166/P.L. 104–292

False Statements Accountability Act of 1996 (Oct. 11, 1996; 110 Stat. 3459)

H.R. 3259/P.L. 104–293

Intelligence Authorization Act for Fiscal Year 1997 (Oct. 11, 1996; 110 Stat. 3461)

H.R. 3723/P.L. 104–294

Economic Espionage Act of 1996 (Oct. 11, 1996; 110 Stat. 3488)

H.R. 3815/P.L. 104–

95 Miscellaneous Trade and Technical Corrections Act of 1996 (Oct. 11, 1996; 110 Stat. 3514)

H.J. Res. 198/P.L. 104–296

Appointing the day for the convening of the first session of the One Hundred Fifth Congress and the day for the counting in Congress of the electoral votes for President and Vice President cast in December 1996. (Oct. 11, 1996; 110 Stat. 3558)

S. 39/P.L. 104–297

Sustainable Fisheries Act (Oct. 11, 1996; 110 Stat. 3559)

S. 811/P.L. 104–298

Water Desalination Act of 1996 (Oct. 11, 1996; 110 Stat. 3622)

S. 1044/P.L. 104–299

Health Centers Consolidation Act of 1996 (Oct. 11, 1996; 110 Stat. 3626)

S. 1467/P.L. 104–300

Fort Peck Rural County Water Supply System Act of 1996 (Oct. 11, 1996; 110 Stat. 3646)

S. 1973/P.L. 104–301

Navajo-Hopi Land Dispute Settlement Act of 1996 (Oct. 11, 1996; 110 Stat. 3649)

S. 2197/P.L. 104–302

To extend the authorized period of stay within the United States for certain nurses. (Oct. 11, 1996; 110 Stat. 3656)

S. 640/P.L. 104–303

Water Resources Development Act of 1996 (Oct. 12, 1996; 110 Stat. 3658)

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