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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA48

Fees for Commodity Inspection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is increasing and establishing new fees charged for inspection services for commodities, other than rice, performed under the Agricultural Marketing Act of 1946 (AMA).

These revisions are designed to generate revenue sufficient to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs, for commodity inspection services rendered and to maintain an appropriate operating reserve.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA-GIPSA-ART, Room 0623–South Building, Stop 3649, 1400 Independence Avenue, S.W., Washington, D.C., 20250–3649, Telephone (202) 720–0292, or FAX (202) 720–4628, or E-Mail—gwollam@fgishq.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The revisions are designed to generate revenue sufficient to recover the operating costs for commodity inspection services and to maintain an appropriate operating reserve. FGIS is making the following changes: increase the hourly and unit fees for commodity inspection services; begin charging actual travel costs for airlines, rental cars, etc., and per diem for travel beyond 25 miles of an official assigned duty location; begin charging for sanitation inspections, pre-inspection conferences, and related services; establish new hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays; eliminate the provisions for entering into a contract for service; and change the fee structure for stowage examinations from an hourly rate to a unit fee.

Fees for commodity inspection services were last increased on June 28, 1984 (49 FR 26547). For nearly 10 years, the 1984 fee schedule sufficiently recovered operating expenses and maintained a minimum 3-month operating reserve. However, by fiscal year (FY) 95, increased operating costs, coupled with reductions in the number of services requested, rendered the 1984 fee schedule inadequate for generating sufficient revenue to cover operating expenses. The operating reserve, which has been funding losses to the commodity inspection program for the past 4 years, was drawn down to the minimum 3-month operating reserve. Given these conditions, the Administrator of GIPSA determined that a fee revision was necessary to meet rising costs and maintain an adequate reserve balance.

Executive Order 12998

This final rule has been reviewed under Executive Order 12998, Civil Justice Reform. It is not intended to have a retroactive effect, nor will this final rule preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. No administrative procedures must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), GIPSA has considered the economic impact of this action on small entities. The main users of GIPSA's official commodity inspection services are under contract from the Department of Agriculture. Some of these are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). This rule will revise the fees charged to businesses for voluntary commodity inspection services. Even though fees will be raised, the increase is small and will not significantly affect these entities. These businesses are under no obligation to use the inspection services, and any decision on their part to discontinue use of the services would not prevent them from marketing their products.

The final rule reflects fee revisions needed to cover the costs of commodity inspection services rendered in accordance with the AMA. James R. Baker, Administrator, GIPSA, has certified that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

Since FY 90, there has been a 40 percent decrease in the amount of commodity inspections requested. The commodity inspection program experienced a $1,642,720 loss (revenue $4,011,116 and cost $5,468,059) during FY 95. The commodity program's retained earnings are currently −$60,383. Further losses are projected if adjustments to the existing fee schedule are not made.

Information Collection and Record Keeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the previously approved information collection and recordkeeping requirements for applications for inspection services, including official commodity inspections, have been approved by the Office of Management and Budget under control number 0580–0013.

Background

On July 8, 1996, FGIS proposed in the Federal Register (61 FR 35687) to revise fees charged for inspection services for commodities, other than rice, performed under the AMA: Increase hourly and unit fees; charge actual travel and per diem costs; charge for sanitation inspections, pre-inspection conferences, and related services; establish hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays; eliminate the provisions for entering into a contract for service; and change the fee structure

for stowage examinations from an hourly rate to a unit fee.

The commodity inspection fees were last amended effective June 28, 1984 (49 FR 26547). These fees were to cover, as nearly as practicable, the operating costs for the program.

The majority of processed commodity inspections performed under the AMA are on purchases made by the Department of Agriculture's Farm Service Agency (FSA), formerly the Agricultural Stabilization and Conservation Service. Historically, approximately 92 percent of the services performed have been for FSA purchases. Defense Personnel Support Center (DPSC) inspections account for approximately 2 percent of the inspections; the remaining 6 percent are performed under nongovernment contracts. Approximately 65 percent of graded commodity inspections are for government purchases, and the remaining 35 percent are for commercial sales.

Several actions have caused a general decrease in the number of inspections performed for both graded and processed commodities. Beginning in FY 92, FSA commodity purchases began to decline as a result of the success of a market-oriented farm program that virtually eliminated government-owned commodity grain stocks and, in turn, the portion of processed commodities derived from these stocks. In addition, in FY 94, responsibility for inspecting many products for DPSC was transferred from FGIS to the Agricultural Marketing Service.

Processed commodities comprise approximately 90 percent of the program's revenue. In FY 91, FGIS inspected 26,218 lots. By FY 92, the number of inspected lots dropped to 24,004; in FY 93, 17,494 lots were inspected; and FY 94 saw a slight increase to 19,664. In FY 95, however, the total again decreased to 15,065, or a 43 percent reduction from the number of lots inspected in FY 91. Corresponding decreases have also been experienced for graded commodities.

Revenue collected in FY 91 totaled $6,562,940 and operating costs totaled $5,987,299, for a positive margin of $575,570. Revenue in FY 92 dropped to $5,158,903 due to the decrease in inspections and resulted in a $179,396 loss to the program. Losses were incurred in each of the following years: $1,184,602 in FY 93, $764,865 in FY 94, and $1,456,944 in FY 95. At the same time, FGIS reduced operating costs for the program from $5,987,370 in FY 91 to $5,468,059 in FY 95.

FGIS maintains an operating reserve specifically to cover the cost of shutting down the program in case of an emergency. Agency policy is to maintain the reserve at a level equal to 3 months of operating expenses. In FY 91, the reserve was $4,942,934, which represented 10 months of operating costs. The loss of $179,396 in FY 92 was covered by this reserve.

In FY 92, FGIS reviewed the program's operating reserve to determine if the fund was being maintained at an adequate level. The Agency determined that, while the level exceeded the 3-month reserve minimum, it would not be prudent to decrease the reserve because of anticipated downturns in the number of service requests and the consequent need to cover program losses while restructuring the program.

Again in FY 93, the $1,184,602 loss was covered by the reserve, which was drawn down to a year-end total of $3,889,429. Even with the loss, the fund still represented an 8.5-month reserve. By FY 94, the reserve had dropped to $3,173,033, or the equivalent of 7 months' operating costs. The losses incurred in FY 95 reduced the margin to $1,716,090, which is a 3.2-month reserve and represents the target level for the fund.

In FY 94, FGIS responded to the decline in services requests by initiating a field restructuring plan that continued into FY 95. During this time period, three field offices and one suboffice that were directly involved with providing services were closed and consolidated. This eliminated the cost of maintaining a field office and streamlined overall operations. On two separate occasions, retirement incentives (buyouts) were offered to employees which reduced the staffing levels in this program. Other personnel were transferred to field offices and redirected to other programs. In FY 91, approximately 103 staff years were devoted to this program. By FY 95, the staffing level had been reduced by 35 percent to 67 staff years. The FY 95 level of 15,065 services performed is expected to remain fairly constant in the future. Large numbers of service requests, as seen in the late 1980's and early 1990's, are not forecasted. However, further losses are projected if adjustments to the fee schedule are not made.

Due to reduced and sporadic FSA purchases, efficiencies gained through volume inspections have disappeared. Fluctuations in service demand have increased, even at locations that routinely requested service on a daily basis. These changes have impacted on FGIS' ability to maintain qualified staff at some locations and especially those that are large distances from a field office. In addition, there has been an increase in the proportion of inspections requested by facilities that may need service only one or two weeks per year. Many of these locations are far from field offices. The result is a great deal of long-distance travel from field offices to remote locations for one or two week jobs. Such travel has increased operating costs and, in some instances, has offset the savings gained through the restructuring.

The 1984 fee schedule was designed to recover all costs associated with performing commodity inspection service, including overtime, travel, per diem, and other related services. For nearly 10 years, the 1984 fee schedule generated sufficient revenue to cover operating expenses. This was due, in large part, to continuously improved efficiencies in service delivery and strong market demand for inspection services. Although additional cost saving measures were implemented during FYs 94 and 95, operating expenses and service demand have reached a level at which the 1984 fee schedule no longer generates sufficient revenue to cover costs of providing service.

Since FY 90, there has been a 40 percent decrease in the amount of commodity inspections requested. The commodity inspection program experienced a $1,681,261 loss (revenue $4,011,116 and cost $5,468,059) during FY 95. During FY 96, the commodity program experienced a $1,741,644 loss (revenue $3,458,751 and cost $5,200,395) resulting in an end-of-year operating reserve of −$60,383, and forcing GIPSA to borrow funds from other fee programs.

Based on this information, GIPSA has determined that, under the proposed fee structure, it will be unable to reach a 3-month operating reserve until FY 99. Once the 3-month reserve is attained, fees will be adjusted at least once every 2 years, either upward or downward as necessary, to keep the program operating on a financially sound basis.

Comment Review

FGIS received two comments during the 30-day comment period. One commentor agreed with all proposed increases of existing fees and the establishment of new fees with the exception of charging for travel at actual cost to the Agency. The commentor urged FGIS to consider implementing a more balanced rate structure that will allocate travel costs on a more equitable basis between nearby and remote facilities. FGIS must recover all costs associated with the inspection process in order to be able to provide quality

inspection services. There will always be applicants that are far removed from an office no matter how many offices are maintained. FGIS can contemplate no other more equitable rate structure than recovery of actual travel costs in the manner it charges for travel necessary for official inspections.

The other commentor dealt exclusively with the proposed change in payment for stowage examinations from an hourly rate to a unit fee. They suggested that FGIS increase its hourly rate to recover its cost for this service. They suggest that implementing a unit fee will result in poorer service and higher costs that will negatively impact the Nation's farmers and the shipping industry transporting those commodities, and reduce the Nation's role in foreign trade with respect to grain and other agricultural commodities. FGIS does not agree that implementation of a unit fee will result in poorer service; in fact, it should have the opposite effect. It is true that some applicants for stowage examinations will see significant increases over currently charged fees, the current rate structure was not recovering costs for stowage examinations and, therefore, needed revision.

Final Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. In accordance with this section, FGIS makes the following changes to maintain the current commodity inspection program: (1) increase hourly and unit fees; (2) charge actual travel and per diem costs; (3) charge for sanitation inspections, pre-inspection conferences, and related services; (4) establish hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays; (5) eliminate the provisions for entering into a contract for service; and (6) change the fee structure for stowage examinations from an hourly rate to a unit fee.

1. Hourly Rates

The new hourly rates are divided into two categories: Regular Workday (Monday through Friday) and Nonregular Workday (Saturday, Sunday, and Holiday). Section 868.90, Table 1 and 3, currently define Saturday as a Regular Workday. The revised Table 1 defines a Nonregular Workday as a Saturday, Sunday, and Holiday, and the hourly rate reflects time and one-half paid to employees. In addition, the two separate hourly rates for Regular and Nonregular Workdays contained in Tables 1 and 3 are combined into one set of hourly rates in a revised Table 1 that covers all services.

Section 868.90, Tables 1 and 3, currently provide for reduced hourly fees for applicants who elect to enter into a contract with FGIS. No applicants have used this provision since it was introduced in 1984. Because the current trends of decreasing service requests and increasing demand fluctuations indicate less likelihood for applicants to use this provision in the future, it is eliminated.

The rate for a Regular Workday will increase to $33.00 and a Nonregular Workday will increase to $42.80. These new hourly fees cover FGIS' administrative and supervisory costs for the performance of official services. These costs include personnel compensation and benefits, rent, communications, utilities, contractual services, supplies, and equipment.

2. Unit Rates

Section 868.90, Table 2, currently provides unit fees for the grading of beans, peas, lentils, hops, and other nongraded, nonprocessed commodities. These rates are increased and the current Table 2 is deleted and combined with proposed Table 1. The new unit rates cover FGIS' administrative and supervisory costs for performing the official service, including costs for personnel compensation and benefits, rent, communication, utilities, contractual services, supplies, and equipment.

3. Travel and Per Diem

FGIS is making changes to § 868.92 of the regulations concerning the application of fees covered in Table 1. Specifically, service, as provided under § 868.90, Table 1, will include service provided within 25 miles of the employee's assigned duty point. Travel, per diem, and other related costs will be assessed for providing service beyond the 25-mile limit. Section 868.91, Table 1, Fees for certain Federal rice inspection services, remains unchanged; travel, per diem, and other related costs continue to be included in the hourly rate.

4. Services Other Than Inspections

FGIS is changing the fee structure for stowage examinations from an hourly fee that recovers all costs to a service-specific fee structure currently funded by the hourly rate. The service-specific fee will be a unit fee and applies only to stowage examinations.

FGIS is revising Table 1, Footnote 1 to include provisions for charging for sanitation examinations, pre-inspection conferences, and other related services for which FGIS does not currently charge.

5. Fees for Laboratory Testing Services

Fees for Laboratory Test Services, Table 4, Fees for Official Laboratory Test Services Performed at the FGIS Commodity Testing Laboratory at Beltsville, Maryland, for Processed Agricultural Products, is revised to read: Table 2—Commodity Testing Laboratory, Kansas City, Missouri. Also, this final rule makes a conforming change to delete reference to ''noncontract'' hourly rates from Footnote 2.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et. seq.*)

2. Section 868.90 is revised to read as follows:

§ 868.90 Fees for certain Federal inspection services.

(a) The fees shown in Table 1 apply to Federal Commodity Inspection Services specified below.

TABLE 1.—HOURLY RATES [1] [3]

[Fees for Inspection of Commodities Other Than Rice]

Hourly Rates (per service representative):	
Monday to Friday —$33.00	
Saturday, Sunday, and Holidays—$42.80	
Miscellaneous Processed Commodities [2]:	
(1) Additional Tests (cost per test, assessed in addition to the hourly rate):	
(i) Aflatoxin Test (Thin Layer Chromatography)	$51.40
(ii) Falling Number	$12.00
(iii) Aflatoxin Test Kit	$7.50
Graded Commodities (Beans, Peas, Lentils, Hops, and Pulses):	
(1) Additional Tests—Unit Rates (Beans, Peas, Lentils):	
(i) Field run (per lot or sample)	$22.70
(ii) Other than field run (per lot or sample)	$13.50
(iii) Factor analysis (per factor)	$5.50
(2) Additional Tests—Unit Rates (Hops):	
(i) Lot or sample (per lot or sample)	$29.00
(3) Additional Tests—Unit Rates (Nongraded Nonprocessed Commodities):	
(i) Factor analysis (per factor)	$5.50
(4) Stowage examination (service-on- request) [4]	
(i) Ship (per stowage space)	§ 50.00 (minimum $250 per ship)
(ii) Subsequent ship examinations (same as original)	(minimum $150 per ship)
(iii) Barge (per examination)	$40.00
(iv) All other carriers (per examination)	$15.00

[1] Fees for original commodity inspection and appeal inspection services include, but are not limited to, sampling, grading, weighing, stowage examinations, pre-inspection conferences, sanitation inspections, and other services requested by the applicant and that are performed within 25 miles of the field office. Travel and related expenses (commercial transportation costs, mileage, and per diem) will be assessed in addition to the hourly rate for service beyond the 25-mile limit. Refer to § 868.92, Explanation of service fees and additional fees, for all other service fees except travel and per diem.

[2] When performed at a location other than the Commodity Testing Laboratory.

[3] Faxed and extra copies of certificates will be charged at $1.50 per copy.

[4] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

(b) In addition to the fees, if any, for sampling or other requested service, a fee will be assessed for each laboratory test (original, retest, or appeal) listed in Table 2 of this section.

(c) If a requested test is to be reported on a specified moisture basis, a fee for a moisture test will also be assessed.

(d) Laboratory tests referenced in Table 2 of this section will be charged at the applicable laboratory fee when performed at field locations other than at the applicant's facility.

TABLE 2.—FEES FOR LABORATORY TEST SERVICES [1]

Laboratory tests	Fees
(1) Alpha monoglycerides	$18.00
(2) Aflatoxin test (other than TLC or Minicolumn method)	22.50
(3) Aflatoxin (TLC)	48.00
(4) Aflatoxin (Minicolumn method)	25.00
(5) Appearance & odor	3.00
(6) Ash	8.50
(7) Bacteria count	10.00
(8) Baking test (cookies)	28.00
(9) Bostwick (cooked)	12.60
(10) Bostwick (uncooked/cook test/ dispersibility)	6.50
(11) Brix	8.00
(12) Calcium	12.50
(13) Carotenoid color	12.50
(14) Cold test (oil)	10.00
(15) Color test (syrups)	6.50
(16) Cooking test (other than corn soy blend)	7.00

TABLE 2.—FEES FOR LABORATORY TEST SERVICES [1]—Continued

Laboratory tests	Fees
(17) Crude fat	10.00
(18) Crude fiber	13.00
(19) Dough handling (baking)	8.50
(20) E. coli	19.00
(21) Falling number	12.00
(22) Fat (acid hydrolysis)	14.00
(23) Fat stability (A.O.M.)	27.00
(24) Flash point (open & close cup)	14.00
(25) Free fatty acid	12.00
(26) Hydrogen ion activity (ph)	9.50
(27) Iron enrichment	15.00
(28) Iodine number/value	9.50
(29) Linolenic acid (fatty acid profile)	50.00
(30) Lipid phosphorous	47.00
(31) Livibond color	10.00
(32) Margarine (nonfat solids)	23.60
(33) Moisture	6.00
(34) Moisture average (crackers)	4.00
(35) Moisture & volatile matter	8.50
(36) Performance test (prepared bakery mix)	32.00
(37) Peroxide value	13.50
(38) Phosphorus	14.00
(39) Popcorn kernels (total defects)	19.00
(40) Popping ratio/value popcorn	19.00
(41) Potassium bromate	20.00
(42) Protein	7.50
(43) Rope spore count	31.50
(44) Salmonella	40.00
(45) Salt or sodium content	12.50
(46) Sanitation (filth light)	24.00
(47) Sieve test	5.00
(48) Smoke point	22.00
(49) Solid fat index	85.00
(50) Specific volume (bread)	21.80

TABLE 2.—FEES FOR LABORATORY TEST SERVICES [1]—Continued

Laboratory tests	Fees
(51) Staphylococcus aureus	24.50
(52) Texture	6.50
(53) Tilletia controversa kuhn (TCK) (Qualitative)	25.20
(54) Tilletia controversa kuhn (TCK) (Quantitative)	76.00
(55) Unsaponifiable matter	25.00
(56) Urease activity	12.50
(57) Visual exam (hops pellet)	7.50
(58) Visual exam (insoluable impurities oils & shortenings)	5.00
(59) Visual exam (pasta)	10.50
(60) Visual exam (processed grain products)	12.00
(61) Visual exam (total foreign material other than cereal grains)	6.50
(62) Vitamin enrichment	7.00
(63) Vomitoxin (TLC)	40.00
(64) Vomitoxin (Qualitative)	30.00
(65) Vomitoxin (Quantitative)	40.00
(66) Water activity	20.00
(67) Wiley melting point	12.50
(68) Other laboratory tests	[2]

[1] When laboratory test service is provided for GIPSA by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to GIPSA for the service provided.

[2] Fees for other laboratory tests not referenced in this table will be based on the applicable hourly rate listed in Table 1 of this section.

3. Section 868.92(a)(2) is revised to read as follows:

§ 868.92 Explanation of service fees and additional fees.

(a) * * *

(2) The cost of per diem, subsistence, mileage, or commercial transportation to perform the service for rice inspection only in § 868.91, Table 1. See § 868.90, Table 1, footnote 1, for fees for inspection of commodities other than rice.

* * * * *

Dated: December 13, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–32080 Filed 12–17–96; 8:45 am]

BILLING CODE 3410–EN–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150–AD63

Environmental Review for Renewal of Nuclear Power Plant Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations on the environmental review of applications to renew the operating licenses of nuclear power plants to make minor clarifying and conforming changes and add language inadvertently omitted from Table B–1 of the rulemaking published June 5, 1996 (61 FR 28467). This final rule also presents an analysis of the comments received and the staff responses to the comments requested in the final rule published June 5, 1996. After reviewing the comments received, the NRC has determined that no substantive changes to the final rule are warranted.

EFFECTIVE DATE: This final rule shall be effective on January 17, 1997.

ADDRESSES: Copies of comments received and all documents cited in the supplementary information section of 61 FR 28467 may be examined at the NRC Public Document Room, 2120 L Street NW, (Lower Level) Washington, DC, between the hours of 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Donald P. Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6263; e-mail DPC@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has amended its environmental protection regulations in 10 CFR Part 51 to improve the efficiency of the process of environmental review for applicants seeking to renew a nuclear power plant operating license for up to an additional 20 years. The final rule containing these amendments was published in the Federal Register on June 5, 1996 (61 FR 28467). The amendments are based on the analyses reported in NUREG–1437, ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants'' (May 1996). At several stages in the development of the rule the Commission sought public comment by means of notices in the Federal Register and public workshops. The history of this rulemaking is summarized in the June 5, 1996 notice (61 FR 28469). Prior to the final rule becoming effective, the Commission believed it appropriate to seek comments on the treatment of low-level waste storage and disposal impacts, the cumulative radiological effects from the uranium fuel cycle, and the effects from the disposal of high-level waste and spent fuel. In a supplemental notice published on July 18, 1996 (61 FR 37351), the Commission extended the comment period for these issues to August 5, 1996, and indicated that the final rule would become effective on September 5, 1996, absent notice from the Commission to the contrary. The Commission has reviewed the comments submitted and finds no need to amend the substantive provisions of the rule.

This final rule amends the June 5, 1996 rule with minor nonsubstantive changes. The changes are: addition of five Ground-water Use and Quality issues inadvertently left out of Table B–1 in the June 5, 1996 notice (see, 61 FR 29278, July 29, 1996); minor conforming changes to reflect recent amendments to §§ 51.53 and 51.95 effected by a separate rulemaking (''Decommissioning of Nuclear Power Reactors,'' July 29, 1996 (61 FR 39278)); substitution of one sentence under Findings for the issue ''Offsite radiological impacts (spent fuel and high-level waste disposal)'' in Table B–1, in order to more accurately represent a U.S. Environmental Protection Agency (EPA) regulatory position; a word substitution in 10 CFR 51.53(c)(3)(ii)(M), in order to clarify the information on the environmental effect of transportation of fuel and waste to and from a nuclear power plant that is to be submitted with a license renewal application; and minor clarifying changes to the text in Table B–1 concerning chronic effects of electromagnetic fields.

II. Analysis of Public Comments

A. Commenters.

In response to the Federal Register notice for the final rule published on June 5, 1996 (61 FR 28467), 11 organizations and 1 private citizen submitted written comments. The 11 organizations included the EPA; the States of Maryland, Massachusetts, and Vermont; the Nuclear Energy Institute, and 6 licensees. Commenters expressed concerns about specific aspects of the rule and several commenters referred to material in NUREG–1437 which they believe to be inaccurate or ambiguous. Other than one State, the commenters expressed that the rule should be revised to address their concerns. The seven commenters from the nuclear power industry stated that their concerns should be addressed by supplemental rulemaking and should not delay the effective date of the rule as published in 61 FR 28467. The Commission assumes that EPA, two States, and the private individual intend for their concerns to be addressed by revising the final rule and final GEIS now rather than by supplemental rulemaking. These specific concerns and how and when they should be resolved are addressed below.

B. Radioactive Waste Storage and Disposal, and Cumulative Radiological Effects of the Uranium Fuel Cycle

Comment. The two commenting States expressed concern over the prospect of long-term storage of high-level waste (HLW) at reactor sites. One State also expressed concern over the prospect of long-term storage of low-level waste (LLW) at reactor sites. This State believes that ''the Commission should establish a policy which would condition license renewal to a resolution of radioactive waste disposal issues.'' One State believes that provisions in NRC's regulations for addressing significant new information and the 10-year cycle for reviewing the continued appropriateness of the conclusions codified by the rule are not adequate with respect to the issues of on-site storage and disposal of HLW; and, therefore, site-specific environmental review should be required for these issues, i.e., these issues should be designated Category 2. A third State believes that a Category 1 designation is appropriate for these issues, i.e., findings for the issue codified in the rule may be adopted in site-specific license renewal reviews,

and supports the provision in the rule for periodic evaluation of these issues.

Response. As stated at 61 FR 28477, the Commission acknowledges that there is uncertainty in the schedule of availability of disposal facilities for LLW and HLW. The Commission understands the continuing concern of the States and of the public over the prospects for timely development of waste disposal facilities. The uncertainty in the schedule of availability of disposal facilities is especially of concern because of the waste currently being generated during the initial licensing term of power reactors. The Commission, however, continues to believe that there is sufficient understanding of and experience with the storage of LLW and HLW to conclude that the waste generated at any plant as a result of license renewal can be stored safely and without significant environmental impacts prior to permanent disposal. The Commission believes that conditioning individual license renewal decisions on resolution of radioactive waste disposal issues is not warranted because the Commission has already made a generic determination, codified in 10 CFR 51.23, that spent fuel generated at any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond a license renewal term and that there will be a repository available within the first quarter of the twenty-first century. The waste confidence decision is discussed in Chapter 6 of NUREG–1437, ''Generic Environmental Impact Statement for License Renewal for Nuclear Plants,'' May 1996. The Commission similarly believes that enough is known regarding the effects of permanent disposal to reach the generic conclusion in the rule. The rule is not based on the assumption that Yucca Mountain will be licensed. Also from a regulatory policy perspective, the Commission disagrees with the view of one state that each renewal applicant should come forward with an analysis of the HLW storage and disposal environmental effects. This is a national problem of essentially the same degree of complexity and uncertainty for every renewal application and it would not be useful to have a repetitive reconsideration of the matter.

The Commission further believes that the provisions in the present rule and elsewhere in the Commission's regulations adequately provide for the introduction and consideration of new significant information in license renewal reviews, and that the 10 year review cycle for the rule and the GEIS adequately provides for Commission reassessment of the status of LLW and HLW disposal programs. The Commission recognizes that the possibility of significant unexpected events remains open. Consequently, the Commission will review its conclusions on these waste findings should significant and pertinent unexpected events occur (see also, 49 FR 34658 (August 31, 1984)). In view of the Commission's favorable conclusions regarding prospects for safe and environmentally acceptable waste disposal, it sees no need for conditioning licenses as recommended. The Category 1 designations for these three issues [low-level waste storage and disposal, offsite radiological impacts (spent fuel and high-level waste disposal), and on-site spent fuel] in the final rule has not been changed in response to these comments.

Comment. Six industry organizations specifically commented on the treatment of the LLW and HLW issues in 61 FR 28467 and in the GEIS. Except for the treatment of the environmental impacts of transportation of radiological material to and from the plant, the industry commenters agree with the Commissions findings on waste issues. Transportation (radiological and nonradiological environmental impacts) is designated Category 2 in the final rule. This designation requires some additional review of the environmental impacts of transportation.

The industry commenters argue that the requirements for the review of transportation impacts for license renewal described in the final rule are unclear, and that there are good reasons to change the transportation issue from a Category 2 to a Category 1 designation. The requirements for the review of transportation issues in the final rule were found by the commenters to be unclear with respect to (1) the use and legal status of 10 CFR 51.52, Table S–4, in the plant-specific license renewal review; (2) the conditions that must be met before an applicant may adopt Table S–4; and (3) the extent to which the ''generic'' effects of transporting spent fuel to a high-level waste repository should be considered in a plant-specific license renewal review. In addition, several commenters suggested that DOE should have the responsibility of considering the cumulative environmental impacts from transportation.

Response. The Commission does not believe that changes to the rule in response to industry comments are warranted at this time. However, in order to clarify the rule's requirements, the following guidance is provided on the issue of transportation impacts. As a result of this rulemaking, 10 CFR 51.53(c)(3)(ii)(M) requires applicants to review the environmental effects of transportation in accordance with § 51.52 (Table S–4) and to discuss the generic and cumulative impacts associated with transportation infrastructure in the vicinity of a high-level waste repository site. The candidate site at Yucca Mountain should be used for the purpose of impact analysis as long as that site is under consideration for licensing. The amendments to 10 CFR Part 51 in this rulemaking do not alter the existing provisions of § 51.52. If an applicant's reactor meets all the conditions in § 51.52(a) the applicant may use the environmental impacts of transportation of fuel and waste to and from the reactor set forth in Summary Table S–4 to characterize the transportation impacts from the renewal of its license. However, because Table S–4 does not take into account the generic and cumulative (including synergistic) impacts of transportation infrastructure construction and operation in the vicinity of the Yucca Mountain repository site, such information would have to be provided by these applicants.

For reactors not meeting the conditions of § 51.52(a), the applicant must provide a full description and detailed analysis of such environmental effects associated with transportation in accordance with § 51.52(b). Industry commenters pointed out that the conditions in paragraph (a) are not likely to be satisfied by many plants now using higher burn-up fuel. In such cases, applicants may incorporate in their analysis the discussion presented in the GEIS in Section 6.2.3 ''Sensitivity to Recent Changes in the Fuel Cycle,'' and Section 6.3 ''Transportation.'' This category of applicants also would have to consider the generic and cumulative impacts of transportation operation in the vicinity of the Yucca Mountain repository site. These impacts may be attributed to an individual plant on a reactor-year basis.

As part of its efforts to develop regulatory guidance for this rule, the Commission will consider whether further changes to the rule are desirable to generically address: (1) The issue of cumulative transportation impacts and (2) the implications that the use of higher burn-up fuel have for the conclusions in Table S–4. After consideration of these issues, the Commission will determine whether the issue of transportation impacts should be changed to Category 1.

As to the NRC's duty to consider the cumulative transportation impacts of license renewal, the Commission

continues to believe that such analysis is appropriate. The fact that DOE rather than an applicant will have title to spent-fuel and high-level waste when it is transported to a repository and that ultimately DOE must consider the environmental impacts of transportation does not relieve the Commission of the responsibility under the National Environmental Policy Act to consider the impacts of transportation in its environmental review for renewal of an operating license.

Finally, regarding the attribution of transportation impacts between the initial operating license and the renewed license, the allocation of environmental data in § 51.51 and environmental impacts in § 51.52 on the bases of a reference reactor year sets the precedence for allocating generic (common) impacts.

Comment. EPA states that the discussion of the radiological impacts of the uranium fuel cycle (61 FR 28478) requires clarification regarding the collective effects, over time, on human populations.

Response. The Commission believes that the discussion adequately summarizes the potential collective health impacts of the uranium fuel cycle. The following is provided to clarify the specific elements of that discussion. First, an estimate is provided of the 100-year dose commitment to the U. S. population and the estimated cancer fatalities from the uranium fuel cycle that are attributable to each 20-year license renewal. It is then explained that much of the dose to individuals is ''tiny'' and is attributed to radon releases from mines and tailing piles. Second, it is explained that the dose calculation could be extended to cover populations outside of the U. S. over thousands of years, and that such a calculation would estimate thousands of cancer fatalities. Third, the uncertainty that would be involved in this computation and the conservative nature of the estimates of fatalities are discussed. Views of the scientific community about the possible overestimation of fatalities resulting from the assumptions used are developed in Appendix E, Section E.4.1, of the GEIS. Finally, the discussion points out that no standards exist that can be used to reach a conclusion as to the significance of the magnitude of the collective radiological health effects.

Comment. EPA maintains that natural background radiation should not be used comparatively to judge the significance of additional doses of radiation.

Response. The statement referred to by EPA (61 FR 28478), is intended to provide perspective only on the magnitude of the additional dose, not on its significance.

Comment. EPA believes that the GEIS is unclear as to whether occupational doses are measured as the dose received by the average worker or the maximally exposed worker. The NRC should clarify what significance these two distinct measures have with respect to the NRC's regulatory regime for reactor licensing.

Response. Occupational dose limits and the requirement to achieve exposures which are as low as reasonably achievable (ALARA) are codified in the Commission's regulations in 10 CFR Part 20. The dose limits and measured doses correspond to the individual. However, the overall effectiveness of the licensee's ALARA programs are reflected by the average doses received by the population of workers. A detailed discussion of the Commission's radiation protection limits and protection measures is provided in Appendix E of the GEIS. These regulations apply to license renewal activities. The estimates in the GEIS of occupational doses due to license renewal assume continued compliance with 10 CFR Part 20, including both the dose limits and the ALARA requirement.

Comment. EPA disagrees with the Commission's definition of ''small'' relative to radiological impacts. The Commission's definition is, ''For the purpose of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small.'' EPA points out that the Commission's regulations permit an upper limit that would exceed the range of 10E–6 to 10E–4, established under the Comprehensive Environmental Response, Compensation and Liability Act, for negligibly small lifetime risk. EPA believes that risks falling above this range should not be designated as small or insignificant.

Response. The definition of ''small'' used for assessing radiological impacts in the GEIS is not synonymous with ''negligibly small,'' which implies that an impact is so insignificant as to be unworthy of consideration. The Commission promotes licensee programs to bring doses below the regulatory limits to ''as low as reasonably achievable'' (ALARA) through its regulations, 10 CFR 50.36(a), Appendix I to 10 CFR Part 50, and provisions in 10 CFR Part 20. Because ALARA programs continue to be effective, actual doses are far below the regulatory limits, limits that represent a small risk. As the Commission's dose limits are based on radiation protection standards established by interagency committees and reflects international scientific consensus on the adequacy of protection standards, the Commission chooses to define radiological risk resulting from these standards as being ''small.''

Comment. EPA takes issue with the Commission's assumptions, in Section 6.2.2.2 of the GEIS, about regulatory limits for off-site releases of radionuclides for the candidate repository at Yucca Mountain. EPA stated that the Commission should not presume that EPA will adopt the National Academy of Science recommendation regarding a 100 millirem annual dose limit. Further, EPA believes that the GEIS should assume a smaller dose limit as a more conservative bounding estimate, consistent with the stated objective of Table S–3 to represent the worst case or bounding estimate of the potential release from the uranium fuel cycle [GEIS page 6–1].

Response. The Commission does not assume that EPA will adopt a 100 millirem annual dose limit. The discussion in Section 6.2.2.2 is clear that this limit is recommended by the Academy as a starting point for consideration, and that there is some measure of consensus among national and international bodies that the limits should be a fraction of the 100 mrem/year. At this time, the Commission is not prepared to speculate as to what the final limit will be.

Comment. EPA states: ''The NRC has mis-stated the Agency's expectations regarding the performance of a high-level waste repository, and in doing so has used an inappropriate benchmark for its discussion of acceptable doses to the general public from the disposal of reactor fuel. Table B–1 * * * states that EPA's cumulative release limits (from 40 CFR Part 191) are based on a population impact goal of 1,000 premature cancer deaths in the first 10,000 years after closure of a repository. The table mistakenly equates EPA's standard for releases from a high-level waste repository—an extreme upper limit that would result in 1,000 premature cancer deaths—with EPA's goal or expectation for the performance of such repositories. EPA stated in the promulgation of its high-level waste regulation that a repository for 100,000 metric tonnes of reactor fuel would cause between 10 and 100 such deaths, on the assumption that the repository complies with the NRC's enforceable requirements for engineered barriers

found at 10 CFR Part 60. The Commission should not use 1,000 fatal cancers as a benchmark for repository performance and instead should consider the Agency's stated expectation that a well-constructed, well-sited repository should out-perform this level by ten or one-hundred-fold. The same discussion appears in Section 6.2.2.2 of the GEIS on page 6–20 and should also be corrected there.''

Response. The Commission agrees that referring to 1,000 premature cancer deaths as an EPA population ''impact goal'' is misleading. Until final repository release standards are promulgated and health impact estimates are available, the Commission will continue to use 1,000 premature cancer deaths in the first 10,000 years after closure of a repository as an upper bound estimate of cumulative health effects. The following sentence has been substituted in the rule for the one with which EPA disagrees: ''Repository performance standards that will be required by EPA are expected to result in releases and associated health consequences in the range between 10 and 100 premature cancer deaths with an upper limit of 1,000 premature cancer deaths world-wide for a 100,000 metric tonne (MTHM) repository.''

Comment. EPA states: ''The NRC has not adequately justified certain assumptions regarding its analysis of risks from the disposal of spent nuclear (reactor) fuel in the high-level waste repository at Yucca Mountain. The NRC asserts that analyses in the GEIS of health effects from disposal of reactor fuel need not extend beyond 1,000 years, though NRC's own regulations for high-level waste disposal, found at 10 CFR Part 60, contain explicit numerical requirements on releases occurring after the first 1,000 years. An analysis extending over a longer period of time would be more appropriate, such as for 10,000 years as required in EPA's high-level waste standard applicable to sites other than Yucca Mountain.''

Response. This comment refers to an NRC staff response (found at NUREG–1529, page C7–3) to a comment made by an EPA participant in the NRC Public Workshop to Discuss License Renewal, held in Arlington, Virginia, November 4 and 5, 1991 (Session 4, page 26). The EPA participant pointed out that in the discussion of the uranium fuel cycle in the draft GEIS, NRC provided estimates of population dose commitments from open-pit uranium mines and stabilized tailings piles for 100, 500 and 1,000 years, but didn't provide long-term estimates for other long-lived materials. The commenter went on to point out that in the case of the high-level waste repository these calculations are carried out for 10,000 years, although in his view a calculation of impact should be carried until there is no more impact. The staff response to this comment is intended to point out that the likely radiological impacts attributable to any one nuclear power plant's HLW generated as a result of license renewal are uncertain and are unlikely to be significantly altered by consideration of the impacts that may be attributable to the period from 1,000 to 10,000 years. The basis for the evaluation of the environmental impact of the uranium fuel cycle for the renewal of an operating license is 10 CFR 51.51—Table S–3, as supplemented with an evaluation of the contribution of Radon-222 and Technetium-99 to the environmental impact of the fuel cycle. The environmental data in Table S–3 and discussion of associated environmental impacts is expressed on the basis of a reference reactor year of operation. Discussion of fuel cycle impacts has been further supplemented in the final GEIS with available information on the status of regulatory requirements and studies on the possible performance of the candidate high-level waste repository at Yucca Mountain.

C. Severe Accident Mitigation Design Alternatives

Comment. Three industry commenters disagreed with the designation of severe accidents as Category 2 in the final rule and the requirement that severe accident mitigation design alternatives (SAMDAs) must be addressed by the applicant and staff if SAMDAs had not previously been addressed in a staff environmental document for the plant. They noted that efforts to analyze severe accident vulnerabilities and the opportunities to mitigate the vulnerabilities will be completed for all plants in the near future. These analyses will provide the bases for a generic finding on SAMDAs for all plants, including the designation of Category 1 for severe accidents. One commenter proposed that a generic Category 1 finding could be made that consideration of SAMDAs is not required for any plant that has a completed Individual Plant Examination (IPE) and Individual Plant Examination of External Events (IPEEE).

Response. It is stated at 61 FR 28481 that upon completion of its IPE/IPEEE program, the Commission may review the issue of severe accident mitigation for license renewal and consider, by separate rulemaking, reclassifying severe accidents as a Category 1 issue. Completion of an IPE and IPEEE in itself is not sufficient to fulfill the Commission's responsibility under the National Environmental Policy Act (NEPA). SAMDA alternatives must be addressed within an Environmental Impact Statement (EIS), or supplement to an EIS, or an Environmental Assessment. The Commission believes that this can be most efficiently accomplished generically through a supplement to the GEIS and rule amendment based on Commission review of all IPEs and IPEEEs. Prior to successful completion of such a rulemaking an applicant will have to submit a SAMDA alternatives analysis, based on its IPE and IPEEE (if available), in its environmental report. Then the Commission will review that analysis in a supplemental EIS for the plant.

D. Electromagnetic Fields (Chronic Effects)

Comment. Four industry commenters disagreed with the treatment of chronic health effects of transmission line electromagnetic fields. The rule contains the finding that the magnitude of effects is uncertain. No finding is made in the rule as to whether this issue is a Category 1 or Category 2. The commenters note that no submittal is required of an applicant for this issue until such time as the Commission finds that a consensus has been reached by the appropriate Federal health agencies that there are adverse health effects. The commenters believe that the number of scientific studies performed over a long period of time which could find no harmful effects is adequate disclosure under the NEPA to designate this issue Category 1. It is suggested that an alternative to a Category 1 designation is rewording Footnote 5 to Table B–1 in the rule to state in a more positive manner that there is no scientific evidence of chronic biological effects on humans and that this issue will not be admitted as a contention in any hearing on a renewal application. One commenter believes that this issue is not related to refurbishment activities and thus should not be addressed in the context of license renewal.

Response. The Commission is not inclined at this time to change the rule relative to the treatment of the chronic human health effects of transmission line electromagnetic fields. The Commission recognizes that biological and physical studies of electromagnetic fields have not found consistent evidence linking harmful effects with field exposures and that much of the scientific evidence and many experts in the field arguably would support a

Category 1 determination for this issue. However, the Commission also recognizes that research is continuing in this area, and that a scientific consensus on the issue has not yet emerged. Consequently, the Commission believes that a more conservative position on the matter is appropriate at this time. With respect to concern that nonproductive litigation of this issue will take place in license renewal hearings, it should be noted that because of the intensive scrutiny given to this issue within the scientific community, any contention will have to meet scientific standards for admission.

E. Environmental Justice

Comment. Comments about the treatment of environmental justice in the rule were offered by EPA and two licensees. EPA stated that as the Commission further defines its environmental justice requirements it should consider the draft guidance issued by the Council on Environmental Quality (CEQ) on May 24, 1996, and the draft guidance issued by EPA on July 12, 1996. The licensees believe that the rule should include provisions for the treatment of environmental justice that take into consideration that most environmental impacts of relicensing nuclear plants have been found to be small and whether there is any benefit in conducting an environmental justice review for an already sited facility.

Response. The Commission is aware of the CEQ and EPA draft guidance on the treatment of environmental justice in NEPA reviews. This guidance is being considered as the Commission proceeds with developing its own requirements for the treatment of environmental justice in NEPA reviews. As these requirements are developed, the Commission will consider whether it is appropriate to take a generic rather than a site-specific approach to this issue for license renewal reviews.

F. Supplemental Site-Specific Environmental Impact Statement Versus Environmental Assessment

Comment. A licensee disagrees with the Commission's decision that a supplemental EIS will be prepared for license renewal reviews rather than a supplemental environmental assessment (EA) as proposed in the proposed rule. The licensee believes that environmental reviews will show that there will be no significant environmental impact for a number of license renewal applicants, and therefore preparation of an environmental assessment should be allowed under the final rule.

Response. Several considerations led to the Commission's decision to require a supplemental EIS in license renewal reviews. The proposed rule and supporting GEIS would have included a preliminary conclusion of a favorable cost-benefit balance. The function of an EA would have been to consider the impacts associated with a limited set of environmental issues and whether these impacts would overturn the favorable preliminary cost-benefit finding in the GEIS and codified in the rule. Because there was a possibility that the impacts for the limited set of environmental issues would be found to be nonexistent or insignificant (no significant impacts), use of an EA was provided for in the proposed rule. In addition, a finding of no significant impact and the supporting EA may be issued in draft for comment at the discretion of the appropriate NRC staff director. The proposed rule was challenged with respect to preliminary cost-benefit findings and procedural hurdles to public input to the license renewal review. To resolve these concerns, the Commission modified the rule to eliminate the preliminary license renewal finding and to make that finding only after consideration of all impacts within the plant-specific review. The Commission believes that the sum of all the individual impacts that are to be considered in the decision whether to renew a nuclear power plant operating license for an additional 20 years, especially given the controversy over various aspects of nuclear power, exceeds the Commission's threshold for a finding of no significant impact. This and the desire to ensure public access to the license renewal review process led to the requirement of a supplemental EIS for license renewal.

G. Purpose and Need for the Proposed Action

Comment. EPA questions the definition of the ''proposed action'' within the context of the discussion of purpose and need at 61 FR 28472.

Response. The definition of ''purpose and need'' is to be applied to the ''proposed action'' of renewal of a nuclear power plant operating license. It does not refer to and should not be confused with the purpose of the GEIS, which is given in the GEIS, Section 1.1 Purpose of the GEIS.

H. Alternatives

Comment. A individual believes that the rule appears to contradict the *Limerick Ecology Action* decision, 869 F.2d 719 (3rd Cir. 1989). The commenter states that this decision ''* * * requires the environmental review to look at non-nuclear design alternatives in context of severe accidents including non-nuclear alternatives.'' The commenter proceeds to express concern that the analysis of alternatives consider ''efficiency and conservation'' and that sites considered for alternatives not be limited geographically because of the ability to wheel power over long distances. Finally, the individual objects to eliminating utility economics from the environmental review because ''The real world reason to extend an operating license is that of utility economics.''

Response. The *Limerick* decision was concerned with the consideration of design mitigation alternatives specifically for the Limerick plant, not with ''non-nuclear design alternatives.'' With respect to the commenters concerns about the treatment of alternatives to license renewal, the Commission believes that the final GEIS and rule adequately accommodate these concerns. The consideration of alternative energy sources in individual license renewal reviews will consider those alternatives that are reasonable for the region, including power purchases from outside the applicant's service area. Also, in assessing the environmental impacts of new generating capacity it will not necessarily be assumed that the capacity would be constructed on the site under review. Finally, consideration of the economic merits of renewing a plant operating license is eliminated only from the Commission's decision whether to renew. The decision about the economic merits of continued operation of a nuclear power plant will be made by the owners and the State regulators.

III. Procedural Background

Because this rule makes only minor clarifying and conforming changes and adds language inadvertently omitted from Table B–1 of the rulemaking published June 5, 1996, and because public comments were solicited on that rulemaking the NRC is approving this rule without seeking public comments on proposed amendments. As such, pursuant to 5 U.S.C. 553(b)(B), the Commission for good cause finds that a notice and comment procedure is unnecessary for this rulemaking.

IV. Finding of No Significant Environmental Impact: Availability

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been

prepared for this regulation. This action is procedural in nature and pertains only to the type of environmental information to be reviewed.

V. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0021.

The public reporting burden for this collection of information is estimated to average 4,200 hours per response, including the time for reviewing 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 the burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0021), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Regulatory Analysis

The regulatory analysis prepared for the final rule published June 5, 1996 (61 FR 28467) is unchanged for this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The two alternatives considered were:

(A) Retaining the existing 10 CFR Part 51 review process for license renewal, which requires that all reviews be on a plant-specific basis; and

(B) Amending 10 CFR Part 51 to allow a portion of the environmental review to be conducted on a generic basis.

The conclusions of the regulatory analysis show substantial cost savings of alternative (B) over alternative (A). The analysis, NUREG–1440, is available for inspection in the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. Copies of the analysis are available as described in Section V.

VII. Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact on a substantial number of small entities. The final rule states the application procedures and environmental information to be submitted by nuclear power plant licensees to facilitate NRC's obligations under NEPA. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act, 15 U.S.C. 632, or the Commission's Size Standards, April 11, 1995 (60 FR 18344).

VIII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major rule'' and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

IX. Backfit Analysis

The NRC has determined that these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1); therefore, a backfit analysis need not be prepared.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the National Environmental Policy Act of 1969, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 51.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

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

Authority: Sec. 161, 68 Stat. 948, as amended, Sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. Section 51.45 is amended by revising paragraph (c) to read as follows:

§ 51.45 Environmental report.

* * * * *

(c) *Analysis.* The environmental report shall include an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects. Except for environmental reports prepared at the license renewal stage pursuant to § 51.53(c), the analysis in the environmental report should also include consideration of the economic, technical, and other benefits and costs of the proposed action and of alternatives. Environmental reports prepared at the license renewal stage pursuant to § 51.53(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except insofar as such benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, environmental reports prepared pursuant to § 51.53(c) need not discuss other issues not related to the environmental effects of the proposed action and alternatives. The analyses for environmental reports shall, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, those considerations or factors shall be discussed in qualitative terms. The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis.

* * * * *

3. Section 51.53 is revised to read as follows:

§ 51.53 Postconstruction environmental reports.

(a) *General.* Any environmental report prepared under the provisions of this section may incorporate by reference any information contained in a prior environmental report or supplement thereto that relates to the production or utilization facility or any information contained in a final environmental document previously prepared by the NRC staff that relates to the production or utilization facility. Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the license renewal stage; NRC staff-prepared final generic environmental impact statements; and environmental assessments and records of decisions prepared in connection with the construction permit, the operating license, and any license amendment for that facility.

(b) *Operating license stage.* Each applicant for a license to operate a production or utilization facility covered by § 51.20 shall submit with its application the number of copies specified in § 51.55 of a separate document entitled ''Supplement to Applicant's Environmental Report—Operating License Stage,'' which will update ''Applicant's Environmental Report—Construction Permit Stage.'' Unless otherwise required by the Commission, the applicant for an operating license for a nuclear power reactor shall submit this report only in connection with the first licensing action authorizing full-power operation. In this report, the applicant shall discuss the same matters described in §§ 51.45, 51.51, and 51.52, but only to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit. No discussion of need for power, or of alternative energy sources, or of alternative sites for the facility, or of any aspect of the storage of spent fuel for the facility within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b) is required in this report.

(c) *Operating license renewal stage.* (1) Each applicant for renewal of a license to operate a nuclear power plant under part 54 of this chapter shall submit with its application the number of copies specified in § 51.55 of a separate document entitled ''Applicant's Environmental Report—Operating License Renewal Stage.''

(2) The report must contain a description of the proposed action, including the applicant's plans to modify the facility or its administrative control procedures as described in accordance with § 54.21 of this chapter. This report must describe in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment. In addition, the applicant shall discuss in this report the environmental impacts of alternatives and any other matters described in § 51.45. The report is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. The environmental report need not discuss other issues not related to the environmental effects of the proposed action and the alternatives. In addition, the environmental report need not discuss any aspect of the storage of spent fuel for the facility within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b).

(3) For those applicants seeking an initial renewal license and holding either an operating license or construction permit as of June 30, 1995, the environmental report shall include the information required in paragraph (c)(2) of this section subject to the following conditions and considerations:

(i) The environmental report for the operating license renewal stage is not required to contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in Appendix B to subpart A of this part.

(ii) The environmental report must contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term, for those issues identified as Category 2 issues in Appendix B to subpart A of this part. The required analyses are as follows:

(A) If the applicant's plant utilizes cooling towers or cooling ponds and withdraws make-up water from a river whose annual flow rate is less than 3.15×10^{12} ft^3/year (9×10^{10} m^3/year), an assessment of the impact of the proposed action on the flow of the river and related impacts on instream and riparian ecological communities must be provided. The applicant shall also provide an assessment of the impacts of the withdrawal of water from the river on alluvial aquifers during low flow.

(B) If the applicant's plant utilizes once-through cooling or cooling pond heat dissipation systems, the applicant shall provide a copy of current Clean Water Act 316(b) determinations and, if necessary, a 316(a) variance in accordance with 40 CFR part 125, or equivalent State permits and supporting documentation. If the applicant can not provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from heat shock and impingement and entrainment.

(C) If the applicant's plant uses Ranney wells or pumps more than 100 gallons (total onsite) of ground water per minute, an assessment of the impact of the proposed action on ground-water use must be provided.

(D) If the applicant's plant is located at an inland site and utilizes cooling ponds, an assessment of the impact of the proposed action on groundwater quality must be provided.

(E) All license renewal applicants shall assess the impact of refurbishment and other license-renewal-related construction activities on important plant and animal habitats. Additionally, the applicant shall assess the impact of the proposed action on threatened or endangered species in accordance with the Endangered Species Act.

(F) If the applicant's plant is located in or near a nonattainment or maintenance area, an assessment of vehicle exhaust emissions anticipated at the time of peak refurbishment workforce must be provided in accordance with the Clean Air Act as amended.

(G) If the applicant's plant uses a cooling pond, lake, or canal or discharges into a river having an annual average flow rate of less than 3.15×10^{12} ft^3/year (9×10^{10} m^3/year), an assessment of the impact of the proposed action on public health from thermophilic organisms in the affected water must be provided.

(H) If the applicant's transmission lines that were constructed for the specific purpose of connecting the plant to the transmission system do not meet the recommendations of the National Electric Safety Code for preventing electric shock from induced currents, an assessment of the impact of the proposed action on the potential shock hazard from the transmission lines must be provided.

(I) An assessment of the impact of the proposed action on housing availability, land-use, and public schools (impacts from refurbishment activities only)

within the vicinity of the plant must be provided. Additionally, the applicant shall provide an assessment of the impact of population increases attributable to the proposed project on the public water supply.

(J) All applicants shall assess the impact of the proposed project on local transportation during periods of license renewal refurbishment activities.

(K) All applicants shall assess whether any historic or archaeological properties will be affected by the proposed project.

(L) If the staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be provided.

(M) The environmental effects of transportation of fuel and waste shall be reviewed in accordance with § 51.52. The review of impacts shall also discuss the generic and cumulative impacts associated with transportation operation in the vicinity of a high-level waste repository site. The candidate site at Yucca Mountain should be used for the purpose of impact analysis as long as that site is under consideration for licensing.

(iii) The report must contain a consideration of alternatives for reducing adverse impacts, as required by § 51.45(c), for all Category 2 license renewal issues in Appendix B to subpart A of this part. No such consideration is required for Category 1 issues in Appendix B to subpart A of this part.

(iv) The environmental report must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware.

(d) *Postoperating license stage*. Each applicant for a license amendment authorizing decommissioning activities for a production or utilization facility either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license amendment approving a license termination plan or decommissioning plan under § 50.82 of this chapter either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled ''Supplement to Applicant's Environmental Report—Post Operating License Stage,'' which will update ''Applicant's Environmental Report—Operating License Stage,'' as appropriate, to reflect any new information or significant environmental change associated with the applicant's proposed decommissioning activities or with the applicant's proposed activities with respect to the planned storage of spent fuel. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), the applicant shall only address the environmental impact of spent fuel storage for the term of the license applied for. The ''Supplement to Applicant's Environmental Report—Post Operating License Stage'' may incorporate by reference any information contained in ''Applicants Environmental Report—Construction Permit Stage.

4. In § 51.55, paragraph (a) is revised to read as follows:

§ 51.55 Environmental report—number of copies; distribution.

(a) Each applicant for a license to construct and operate a production or utilization facility covered by paragraphs (b)(1), (b)(2), (b)(3), or (b)(4) of § 51.20, each applicant for renewal of an operating license for a nuclear power plant, each applicant for a license amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20, and each applicant for a license or license amendment to store spent fuel at a nuclear power plant after expiration of the operating license for the nuclear power plant shall submit to the Director of the Office of Nuclear Reactor Regulation or the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate, 41 copies of an environmental report or any supplement to an environmental report. The applicant shall retain an additional 109 copies of the environmental report or any supplement to the environmental report for distribution to parties and Boards in the NRC proceedings; Federal, State, and local officials; and any affected Indian tribes, in accordance with written instructions issued by the Director of the Office of Nuclear Reactor Regulation or the Director of the Office Nuclear Material Safety and Safeguards, as appropriate.

* * * * *

6. In § 51.71, paragraphs (d) and (e) are revised to read as follows:

§ 51.71 Draft environmental impact statement—contents.

* * * * *

(d) *Analysis*. The draft environmental impact statement will include a preliminary analysis that considers and weighs the environmental effects of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects. Except for supplemental environmental impact statements for the operating license renewal stage prepared pursuant to § 51.95(c), draft environmental impact statements should also include consideration of the economic, technical, and other benefits and costs of the proposed action and alternatives and indicate what other interests and considerations of Federal policy, including factors not related to environmental quality if applicable, are relevant to the consideration of environmental effects of the proposed action identified pursuant to paragraph (a) of this section. Supplemental environmental impact statements prepared at the license renewal stage pursuant to § 51.95(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except insofar as such benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and associated alternatives. The draft supplemental environmental impact statement for license renewal prepared pursuant to § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in Appendix B to subpart A of this part. The draft supplemental environmental impact statement must contain an analysis of those issues identified as Category 2 in Appendix B to subpart A of this part that are open for the proposed action. The analysis for all draft environmental impact statements will, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms. Due consideration will be given to compliance with environmental quality standards and requirements that have been imposed by Federal, State, regional, and local agencies having

responsibility for environmental protection, including applicable zoning and land-use regulations and water pollution limitations or requirements promulgated or imposed pursuant to the Federal Water Pollution Control Act. The environmental impact of the proposed action will be considered in the analysis with respect to matters covered by such standards and requirements irrespective of whether a certification or license from the appropriate authority has been obtained.[3] While satisfaction of Commission standards and criteria pertaining to radiological effects will be necessary to meet the licensing requirements of the Atomic Energy Act, the analysis will, for the purposes of NEPA, consider the radiological effects of the proposed action and alternatives.

(e) *Preliminary recommendation.* The draft environmental impact statement normally will include a preliminary recommendation by the NRC staff respecting the proposed action. This preliminary recommendation will be based on the information and analysis described in paragraphs (a) through (d) of this section and §§ 51.75, 51.76, 51.80, 51.85, and 51.95, as appropriate, and will be reached after considering the environmental effects of the proposed action and reasonable alternatives,[4] and, except for supplemental environmental impact statements for the operating license renewal stage prepared pursuant to § 51.95(c), after weighing the costs and benefits of the proposed action. In lieu of a recommendation, the NRC staff may indicate in the draft statement that two or more alternatives remain under consideration.

5. In Section 51.75, redesignate footnote 4 as footnote 5.

7. Section 51.95 is revised to read as follows:

§ 51.95 Postconstruction environmental impact statements.

(a) *General.* Any supplement to a final environmental impact statement or any environmental assessment prepared under the provisions of this section may incorporate by reference any information contained in a final environmental document previously prepared by the NRC staff that relates to the same production or utilization facility. Documents that may be referenced include, but are not limited to, the final environmental impact statement; supplements to the final environmental impact statement, including supplements prepared at the operating license stage; NRC staff-prepared final generic environmental impact statements; environmental assessments and records of decisions prepared in connection with the construction permit, the operating license, and any license amendment for that facility. A supplement to a final environmental impact statement will include a request for comments as provided in § 51.73.

(b) *Initial operating license stage.* In connection with the issuance of an operating license for a production or utilization facility, the NRC staff will prepare a supplement to the final environmental impact statement on the construction permit for that facility, which will update the prior environmental review. The supplement will only cover matters that differ from the final environmental impact statement or that reflect significant new information concerning matters discussed in the final environmental impact statement. Unless otherwise determined by the Commission, a supplement on the operation of a nuclear power plant will not include a discussion of need for power, or of alternative energy sources, or of alternative sites, or of any aspect of the storage of spent fuel for the nuclear power plant within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b), and will only be prepared in connection with the first licensing action authorizing full-power operation.

(c) *Operating license renewal stage.* In connection with the renewal of an operating license for a nuclear power plant under part 54 of this chapter, the Commission shall prepare an EIS, which is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (May 1996) which is available in the NRC Public Document Room, 2120 L Street, NW., (Lower Level) Washington, DC..

(1) The supplemental environmental impact statement for the operating license renewal stage shall address those issues as required by § 51.71. In addition, the NRC staff must comply with 40 CFR 1506.6(b)(3) in conducting the additional scoping process as required by § 51.71(a).

(2) The supplemental environmental impact statement for license renewal is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and the alternatives, or any aspect of the storage of spent fuel for the facility within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b). The analysis of alternatives in the supplemental environmental impact statement should be limited to the environmental impacts of such alternatives and should otherwise be prepared in accordance with § 51.71 and Appendix A to subpart A of this part.

(3) The supplemental environmental impact statement shall be issued as a final impact statement in accordance with §§ 51.91 and 51.93 after considering any significant new information relevant to the proposed action contained in the supplement or incorporated by reference.

(4) The supplemental environmental impact statement must contain the NRC staff's recommendation regarding the environmental acceptability of the license renewal action. In order to make its recommendation and final conclusion on the proposed action, the NRC staff, adjudicatory officers, and Commission shall integrate the

[3] Compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act (imposed by EPA or designated permitting states) is not a substitute for and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality, and to consider alternatives to the proposed action that are available for reducing adverse effects. Where an environmental assessment of aquatic impact from plant discharges is available from the permitting authority, the NRC will consider the assessment in its determination of the magnitude of environmental impacts for striking an overall cost-benefit balance at the construction permit and operating license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable at the license renewal stage. When no such assessment of aquatic impacts is available from the permitting authority, NRC will establish on its own or in conjunction with the permitting authority and other agencies having relevant expertise the magnitude of potential impacts for striking an overall cost-benefit balance for the facility at the construction permit and operating license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable at the license renewal stage.

[4] The consideration of reasonable alternatives to a proposed action involving nuclear power reactors (e.g., alternative energy sources) is intended to assist the NRC in meeting its NEPA obligations and does not preclude any State authority from making separate determinations with respect to these alternatives and in no way preempts, displaces, or affects the authority of States or other Federal agencies to address these issues.

conclusions, as amplified by the supporting information in the generic environmental impact statement for issues designated Category 1 (with the exception of offsite radiological impacts for collective effects and the disposal of spent fuel and high level waste) or resolved Category 2,information developed for those open Category 2 issues applicable to the plant in accordance with § 51.53(c)(3)(ii), and any significant new information. Given this information, the NRC staff, adjudicatory officers, and Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

(d) *Postoperating license stage.* In connection with the amendment of an operating license authorizing decommissioning activities at a production or utilization facility covered by § 51.20, either for unrestricted use or based on continuing use restrictions applicable to the site, or with the issuance, amendment or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor, the NRC staff will prepare a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, which will update the prior environmental review. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement-operating license stage, or in the records of decision prepared in connection with the construction permit or the operating license for that facility. The supplement will include a request for comments as provided in § 51.73. Unless other wise required by the Commission in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment or license renewal applied for.

8. In § 51.103, paragraph (a)(3) is revised and paragraph (a)(5) is added to read as follows:

§ 51.103 Record of decision—General.

(a) * * *

(3) Discuss preferences among alternatives based on relevant factors, including economic and technical considerations where appropriate, the NRC's statutory mission, and any essential considerations of national policy, which were balanced by the Commission in making the decision and state how these considerations entered into the decision.

* * * * *

(5) In making a final decision on a license renewal action pursuant to Part 54 of this chapter, the Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

* * * * *

9. In Appendix A to subpart A of 10 CFR part 51 redesignate footnotes 5 through 8 as footnotes 1 through 4.

10. Paragraph 4 of Appendix A to subpart A of 10 CFR part 51 is revised to read as follows:

Appendix A to Subpart A—Format for Presentation of Material in Environmental Impact Statements

* * * * *

4. Purpose of and need for action.

The statement will briefly describe and specify the need for the proposed action. The alternative of no action will be discussed. In the case of nuclear power plant construction or siting, consideration will be given to the potential impact of conservation measures in determining the demand for power and consequent need for additional generating capacity.

* * * * *

11. Appendix B to subpart A of 10 CFR part 51 is revised to read as follows:

Appendix B to Subpart A—Environmental Effect of Renewing the Operating License of a Nuclear Power Plant

The Commission has assessed the environmental impacts associated with granting a renewed operating license for a nuclear power plant to a licensee who holds either an operating license or construction permit as of June 30, 1995. Table B–1 summarizes the Commission's findings on the scope and magnitude of environmental impacts of renewing the operating license for a nuclear power plant as required by section 102(2) of the National Environmental Policy Act of 1969, as amended. Table B–1, subject to an evaluation of those issues identified in Category 2 as requiring further analysis and possible significant new information, represents the analysis of the environmental impacts associated with renewal of any operating license and is to be used in accordance with § 51.95(c). On a 10-year cycle, the Commission intends to review the material in this appendix and update it if necessary. A scoping notice must be published in the Federal Register indicating the results of the NRC's review and inviting public comments and proposals for other areas that should be updated.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]

Issue	Category [2]	Findings [3]
Surface Water Quality, Hydrology, and Use (for all plants)		
Impacts of refurbishment on surface water quality.	1	SMALL. Impacts are expected to be negligible during refurbishment because best management practices are expected to be employed to control soil erosion and spills.
Impacts of refurbishment on surface water use.	1	SMALL. Water use during refurbishment will not increase appreciably or will be reduced during plant outage.
Altered current patterns at intake and discharge structures.	1	SMALL. Altered current patterns have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Altered salinity gradients	1	SMALL. Salinity gradients have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Altered thermal stratification of lakes	1	SMALL. Generally, lake stratification has not been found to be a problem at operating nuclear power plants and is not expected to be a problem during the license renewal term.
Temperature effects on sediment transport capacity.	1	SMALL. These effects have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Scouring caused by discharged cooling water.	1	SMALL. Scouring has not been found to be a problem at most operating nuclear power plants and has caused only localized effects at a few plants. It is not expected to be a problem during the license renewal term.
Eutrophication	1	SMALL. Eutrophication has not been found to be a problem at operating nuclear power plants and is not expected to be a problem during the license renewal term.
Discharge of chlorine or other biocides	1	SMALL. Effects are not a concern among regulatory and resource agencies, and are not expected to be a problem during the license renewal term.
Discharge of sanitary wastes and minor chemical spills.	1	SMALL. Effects are readily controlled through NPDES permit and periodic modifications, if needed, and are not expected to be a problem during the license renewal term.
Discharge of other metals in waste water ..	1	SMALL. These discharges have not been found to be a problem at operating nuclear power plants with cooling-tower-based heat dissipation systems and have been satisfactorily mitigated at other plants. They are not expected to be a problem during the license renewal term.
Water use conflicts (plants with once-through cooling systems).	1	SMALL. These conflicts have not been found to be a problem at operating nuclear power plants with once-through heat dissipation systems.
Water use conflicts (plants with cooling ponds or cooling towers using make-up water from a small river with low flow).	2	SMALL OR MODERATE. The issue has been a concern at nuclear power plants with cooling ponds and at plants with cooling towers. Impacts on instream and riparian communities near these plants could be of moderate significance in some situations. See § 51.53(c)(3)(ii)(A).
Aquatic Ecology (for all plants)		
Refurbishment	1	SMALL. During plant shutdown and refurbishment there will be negligible effects on aquatic biota because of a reduction of entrainment and impingement of organisms or a reduced release of chemicals.
Accumulation of contaminants in sediments or biota.	1	SMALL. Accumulation of contaminants has been a concern at a few nuclear power plants but has been satisfactorily mitigated by replacing copper alloy condenser tubes with those of another metal. It is not expected to be a problem during the license renewal term.
Entrainment of phytoplankton and zooplankton.	1	SMALL. Entrainment of phytoplankton and zooplankton has not been found to be a problem at operating nuclear power plants and is not expected to be a problem during the license renewal term.
Cold shock	1	SMALL. Cold shock has been satisfactorily mitigated at operating nuclear plants with once-through cooling systems, has not endangered fish populations or been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds, and is not expected to be a problem during the license renewal term.
Thermal plume barrier to migrating fish	1	SMALL. Thermal plumes have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Distribution of aquatic organisms	1	SMALL. Thermal discharge may have localized effects but is not expected to effect the larger geographical distribution of aquatic organisms.
Premature emergence of aquatic insects ...	1	SMALL. Premature emergence has been found to be a localized effect at some operating nuclear power plants but has not been a problem and is not expected to be a problem during the license renewal term.
Gas supersaturation (gas bubble disease)	1	SMALL. Gas supersaturation was a concern at a small number of operating nuclear power plants with once-through cooling systems but has been satisfactorily mitigated. It has not been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds and is not expected to be a problem during the license renewal term.
Low dissolved oxygen in the discharge	1	SMALL. Low dissolved oxygen has been a concern at one nuclear power plant with a once-through cooling system but has been effectively mitigated. It has not been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds and is not expected to be a problem during the license renewal term.
Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses.	1	SMALL. These types of losses have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Stimulation of nuisance organisms (e.g., shipworms).	1	SMALL. Stimulation of nuisance organisms has been satisfactorily mitigated at the single nuclear power plant with a once-through cooling system where previously it was a problem. It has not been found to be a problem at operating nuclear power plants with cooling towers or cooling ponds and is not expected to be a problem during the license renewal term.
Aquatic Ecology (for plants with once-through and cooling pond heat dissipation systems)		
Entrainment of fish and shellfish in early life stages.	2	SMALL, MODERATE, OR LARGE. The impacts of entrainment are small at many plants but may be moderate or even large at a few plants with once-through and cooling-pond cooling systems. Further, ongoing efforts in the vicinity of these plants to restore fish populations may increase the numbers of fish susceptible to intake effects during the license renewal period, such that entrainment studies conducted in support of the original license may no longer be valid. See § 51.53(c)(3)(ii)(B).
Impingement of fish and shellfish	2	SMALL, MODERATE, OR LARGE. The impacts of impingement are small at many plants but may be moderate or even large at a few plants with once-through and cooling-pond cooling systems. See § 51.53(c)(3)(ii)(B).
Heat shock	2	SMALL, MODERATE, OR LARGE. Because of continuing concerns about heat shock and the possible need to modify thermal discharges in response to changing environmental conditions, the impacts may be of moderate or large significance at some plants. See § 51.53(c)(3)(ii)(B).
Aquatic Ecology (for plants with cooling-tower-based heat dissipation systems)		
Entrainment of fish and shellfish in early life stages.	1	SMALL. Entrainment of fish has not been found to be a problem at operating nuclear power plants with this type of cooling system and is not expected to be a problem during the license renewal term.
Impingement of fish and shellfish	1	SMALL. The impingement has not been found to be a problem at operating nuclear power plants with this type of cooling system and is not expected to be a problem during the license renewal term.
Heat shock	1	SMALL. Heat shock has not been found to be a problem at operating nuclear power plants with this type of cooling system and is not expected to be a problem during the license renewal term.
Ground-water Use and Quality		
Impacts of refurbishment on ground-water use and quality.	1	SMALL. Extensive dewatering during the original construction on some sites will not be repeated during refurbishment on any sites. Any plant wastes produced during refurbishment will be handled in the same manner as in current operating practices and are not expected to be a problem during the license renewal term.
Ground-water use conflicts (potable and service water; plants that use <100 gpm).	1	SMALL. Plants using less than 100 gpm are not expected to cause any ground-water use conflicts.
Ground-water use conflicts (potable and service water, and dewatering; plants that use >100 gpm).	2	SMALL, MODERATE, OR LARGE. Plants that use more than 100 gpm may cause ground-water use conflicts with nearby ground-water users. See § 51.53(c)(3)(ii)(C).
Ground-water use conflicts (plants using cooling towers withdrawing make-up water from a small river).	2	SMALL, MODERATE, OR LARGE. Water use conflicts may result from surface water withdrawals from small water bodies during low flow conditions which may affect aquifer recharge, especially if other ground-water or upstream surface water users come on line before the time of license renewal. See § 51.53(c)(3)(ii)(A).
Ground-water use conflicts (Ranney wells)	2	SMALL, MODERATE, OR LARGE. Ranney wells can result in potential ground-water depression beyond the site boundary. Impacts of large ground-water withdrawal for cooling tower makeup at nuclear power plants using Ranney wells must be evaluated at the time of application for license renewal. See § 51.53(c)(3)(ii)(C).
Ground-water quality degradation (Ranney wells).	1	SMALL. Ground-water quality at river sites may be degraded by induced infiltration of poor-quality river water into an aquifer that supplies large quantities of reactor cooling water. However, the lower quality infiltrating water would not preclude the current uses of ground water and is not expected to be a problem during the license renewal term.
Ground-water quality degradation (salt-water intrusion).	1	SMALL. Nuclear power plants do not contribute significantly to saltwater intrusion.
Ground-water quality degradation (cooling ponds in salt marshes).	1	SMALL. Sites with closed-cycle cooling ponds may degrade ground-water quality. Because water in salt marshes is brackish, this is not a concern for plants located in salt marshes.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Ground-water quality degradation (cooling ponds at inland sites).	2	SMALL, MODERATE, OR LARGE. Sites with closed-cycle cooling ponds may degrade ground-water quality. For plants located inland, the quality of the ground water in the vicinity of the ponds must be shown to be adequate to allow continuation of current uses. See § 51.53(c)(3)(ii)(D).
Terrestrial Resources		
Refurbishment impacts	2	SMALL, MODERATE, OR LARGE. Refurbishment impacts are insignificant if no loss of important plant and animal habitat occurs. However, it cannot be known whether important plant and animal communities may be affected until the specific proposal is presented with the license renewal application. See § 51.53(c)(3)(ii)(E).
Cooling tower impacts on crops and ornamental vegetation.	1	SMALL. Impacts from salt drift, icing, fogging, or increased humidity associated with cooling tower operation have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Cooling tower impacts on native plants	1	SMALL. Impacts from salt drift, icing, fogging, or increased humidity associated with cooling tower operation have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Bird collisions with cooling towers	1	SMALL. These collisions have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Cooling pond impacts on terrestrial resources.	1	SMALL. Impacts of cooling ponds on terrestrial ecological resources are considered to be of small significance at all sites.
Power line right-of-way management (cutting and herbicide application).	1	SMALL. The impacts of right-of-way maintenance on wildlife are expected to be of small significance at all sites.
Bird collision with power lines	1	SMALL. Impacts are expected to be of small significance at all sites.
Impacts of electromagnetic fields on flora and fauna (plants, agricultural crops, honeybees, wildlife, livestock).	1	SMALL. No significant impacts of electromagnetic fields on terrestrial flora and fauna have been identified. Such effects are not expected to be a problem during the license renewal term.
Floodplains and wetland on power line right of way.	1	SMALL. Periodic vegetation control is necessary in forested wetlands underneath power lines and can be achieved with minimal damage to the wetland. No significant impact is expected at any nuclear power plant during the license renewal term.
Threatened or Endangered Species (for all plants)		
Threatened or endangered species	2	SMALL, MODERATE, OR LARGE. Generally, plant refurbishment and continued operation are not expected to adversely affect threatened or endangered species. However, consultation with appropriate agencies would be needed at the time of license renewal to determine whether threatened or endangered species are present and whether they would be adversely affected. See § 51.53(c)(3)(ii)(E).
Air Quality		
Air quality during refurbishment (non-attainment and maintenance areas).	2	SMALL, MODERATE, OR LARGE. Air quality impacts from plant refurbishment associated with license renewal are expected to be small. However, vehicle exhaust emissions could be cause for concern at locations in or near nonattainment or maintenance areas. The significance of the potential impact cannot be determined without considering the compliance status of each site and the numbers of workers expected to be employed during the outage. See § 51.53(c)(3)(ii)(F).
Air quality effects of transmission lines	1	SMALL. Production of ozone and oxides of nitrogen is insignificant and does not contribute measurably to ambient levels of these gases.
Land Use		
Onsite land use	1	SMALL. Projected onsite land use changes required during refurbishment and the renewal period would be a small fraction of any nuclear power plant site and would involve land that is controlled by the applicant.
Power line right of way	1	SMALL. Ongoing use of power line right of ways would continue with no change in restrictions. The effects of these restrictions are of small significance.
Human Health		
Radiation exposures to the public during refurbishment.	1	SMALL. During refurbishment, the gaseous effluents would result in doses that are similar to those from current operation. Applicable regulatory dose limits to the public are not expected to be exceeded.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Occupational radiation exposures during refurbishment.	1	SMALL. Occupational doses from refurbishment are expected to be within the range of annual average collective doses experienced for pressurized-water reactors and boiling-water reactors. Occupational mortality risk from all causes including radiation is in the mid-range for industrial settings.
Microbiological organisms (occupational health).	1	SMALL. Occupational health impacts are expected to be controlled by continued application of accepted industrial hygiene practices to minimize worker exposures.
Microbiological organisms (public health)(plants using lakes or canals, or cooling towers or cooling ponds that discharge to a small river).	2	SMALL, MODERATE, OR LARGE. These organisms are not expected to be a problem at most operating plants except possibly at plants using cooling ponds, lakes, or canals that discharge to small rivers. Without site-specific data, it is not possible to predict the effects generically. See § 51.53(c)(3)(ii)(G).
Noise	1	SMALL. Noise has not been found to be a problem at operating plants and is not expected to be a problem at any plant during the license renewal term.
Electromagnetic fields, acute effects (electric shock).	2	SMALL, MODERATE, OR LARGE. Electrical shock resulting from direct access to energized conductors or from induced charges in metallic structures have not been found to be a problem at most operating plants and generally are not expected to be a problem during the license renewal term. However, site-specific review is required to determine the significance of the electric shock potential at the site. See § 51.53(c)(3)(ii)(H).
Electromagnetic fields, chronic effects [5]	[4] NA	UNCERTAIN. Biological and physical studies of 60–Hz electromagnetic fields have not found consistent evidence linking harmful effects with field exposures. However, research is continuing in this area and a consensus scientific view has not been reached.[5]
Radiation exposures to public (license renewal term).	1	SMALL. Radiation doses to the public will continue at current levels associated with normal operations.
Occupational radiation exposures (license renewal term).	1	SMALL. Projected maximum occupational doses during the license renewal term are within the range of doses experienced during normal operations and normal maintenance outages, and would be well below regulatory limits.
Socioeconomics		
Housing impacts	2	SMALL, MODERATE, OR LARGE. Housing impacts are expected to be of small significance at plants located in a medium or high population area and not in an area where growth control measures that limit housing development are in effect. Moderate or large housing impacts of the workforce associated with refurbishment may be associated with plants located in sparsely populated areas or in areas with growth control measures that limit housing development. See § 51.53(c)(3)(ii)(I).
Public services: public safety, social services, and tourism and recreation.	1	SMALL. Impacts to public safety, social services, and tourism and recreation are expected to be of small significance at all sites.
Public services: public utilities	2	SMALL OR MODERATE. An increased problem with water shortages at some sites may lead to impacts of moderate significance on public water supply availability. See § 51.53(c)(3)(ii)(I).
Public services, education (refurbishment)	2	SMALL, MODERATE, OR LARGE. Most sites would experience impacts of small significance but larger impacts are possible depending on site- and project-specific factors. See § 51.53(c)(3)(ii)(I).
Public services, education (license renewal term).	1	SMALL. Only impacts of small significance are expected.
Offsite land use (refurbishment)	2	SMALL OR MODERATE. Impacts may be of moderate significance at plants in low population areas. See § 51.53(c)(3)(ii)(I).
Offsite land use (license renewal term)	2	SMALL, MODERATE, OR LARGE. Significant changes in land use may be associated with population and tax revenue changes resulting from license renewal. See § 51.53(c)(3)(ii)(I).
Public services, Transportation	2	SMALL, MODERATE, OR LARGE. Transportation impacts are generally expected to be of small significance. However, the increase in traffic associated with the additional workers and the local road and traffic control conditions may lead to impacts of moderate or large significance at some sites. See § 51.53(c)(3)(ii)(J).
Historic and archaeological resources	2	SMALL, MODERATE, OR LARGE. Generally, plant refurbishment and continued operation are expected to have no more than small adverse impacts on historic and archaeological resources. However, the National Historic Preservation Act requires the Federal agency to consult with the State Historic Preservation Officer to determine whether there are properties present that require protection. See § 51.53(c)(3)(ii)(K).
Aesthetic impacts (refurbishment)	1	SMALL. No significant impacts are expected during refurbishment.
Aesthetic impacts (license renewal term)	1	SMALL. No significant impacts are expected during the license renewal term.
Aesthetic impacts of transmission lines (license renewal term).	1	SMALL. No significant impacts are expected during the license renewal term.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Postulated Accidents		
Design basis accidents	1	SMALL. The NRC staff has concluded that the environmental impacts of design basis accidents are of small significance for all plants.
Severe accidents	2	SMALL. The probability weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to ground water, and societal and economic impacts from severe accidents are small for all plants. However, alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives. See § 51.53(c)(3)(ii)(L).
Uranium Fuel Cycle and Waste Management		
Offsite radiological impacts (individual effects from other than the disposal of spent fuel and high level waste).	1	SMALL. Off-site impacts of the uranium fuel cycle have been considered by the Commission in Table S–3 of this part. Based on information in the GEIS, impacts on individuals from radioactive gaseous and liquid releases including radon-222 and technetium-99 are small.
Offsite radiological impacts (collective effects).	1	The 100 year environmental dose commitment to the U.S. population from the fuel cycle, high level waste and spent fuel disposal is calculated to be about 14,800 person rem, or 12 cancer fatalities, for each additional 20-year power reactor operating term. Much of this, especially the contribution of radon releases from mines and tailing piles, consists of tiny doses summed over large populations. This same dose calculation can theoretically be extended to include many tiny doses over additional thousands of years as well as doses outside the U. S. The result of such a calculation would be thousands of cancer fatalities from the fuel cycle, but this result assumes that even tiny doses have some statistical adverse health effect which will not ever be mitigated (for example no cancer cure in the next thousand years), and that these doses projected over thousands of years are meaningful. However, these assumptions are questionable. In particular, science cannot rule out the possibility that there will be no cancer fatalities from these tiny doses. For perspective, the doses are very small fractions of regulatory limits, and even smaller fractions of natural background exposure to the same populations. Nevertheless, despite all the uncertainty, some judgement as to the regulatory NEPA implications of these matters should be made and it makes no sense to repeat the same judgement in every case. Even taking the uncertainties into account, the Commission concludes that these impacts are acceptable in that these impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR Part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the collective effects of the fuel cycle, this issue is considered Category 1.
Offsite radiological impacts (spent fuel and high level waste disposal).	1	For the high level waste and spent fuel disposal component of the fuel cycle, there are no current regulatory limits for offsite releases of radionuclides for the current candidate repository site. However, if we assume that limits are developed along the lines of the 1995 National Academy of Sciences (NAS) report, ''Technical Bases for Yucca Mountain Standards,'' and that in accordance with the Commission's Waste Confidence Decision, 10 CFR 51.23, a repository can and likely will be developed at some site which will comply with such limits, peak doses to virtually all individuals will be 100 millirem per year or less. However, while the Commission has reasonable confidence that these assumptions will prove correct, there is considerable uncertainty since the limits are yet to be developed, no repository application has been completed or reviewed, and uncertainty is inherent in the models used to evaluate possible pathways to the human environment. The NAS report indicated that 100 millirem per year should be considered as a starting point for limits for individual doses, but notes that some measure of consensus exists among national and international bodies that the limits should be a fraction of the 100 millirem per year. The lifetime individual risk from 100 millirem annual dose limit is about 3×10^{-3}.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
		Estimating cumulative doses to populations over thousands of years is more problematic. The likelihood and consequences of events that could seriously compromise the integrity of a deep geologic repository were evaluated by the Department of Energy in the ''Final Environmental Impact Statement: Management of Commercially Generated Radioactive Waste,'' October 1980. The evaluation estimated the 70-year whole-body dose commitment to the maximum individual and to the regional population resulting from several modes of breaching a reference repository in the year of closure, after 1,000 years, after 100,000 years, and after 100,000,000 years. Subsequently, the NRC and other federal agencies have expended considerable effort to develop models for the design and for the licensing of a high level waste repository, especially for the candidate repository at Yucca Mountain. More meaningful estimates of doses to population may be possible in the future as more is understood about the performance of the proposed Yucca Mountain repository. Such estimates would involve very great uncertainty, especially with respect to cumulative population doses over thousands of years. The standard proposed by the NAS is a limit on maximum individual dose. The relationship of potential new regulatory requirements, based on the NAS report, and cumulative population impacts has not been determined, although the report articulates the view that protection of individuals will adequately protect the population for a repository at Yucca Mountain. However, EPA's generic repository standards in 40 CFR part 191 generally provide an indication of the order of magnitude of cumulative risk to population that could result from the licensing of a Yucca Mountain repository, assuming the ultimate standards will be within the range of standards now under consideration. The standards in 40 CFR part 191 protect the population by imposing ''containment requirements'' that limit the cumulative amount of radioactive material released over 10,000 years. Reporting performance standards that will be required by EPA are expected to result in releases and associated health consequences in the range between 10 and 100 premature cancer deaths with an upper limit of 1,000 premature cancer deaths world-wide for a 100,000 metric tonne (MTHM) repository. Nevertheless, despite all the uncertainty, some judgement as to the regulatory NEPA implications of these matters should be made and it makes no sense to repeat the same judgement in every case. Even taking the uncertainties into account, the Commission concludes that these impacts are acceptable in that these impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the impacts of spent fuel and high level waste disposal, this issue is considered Category 1.
Nonradiological impacts of the uranium fuel cycle.	1	SMALL. The nonradiological impacts of the uranium fuel cycle resulting from the renewal of an operating license for any plant are found to be small.
Low-level waste storage and disposal	1	SMALL. The comprehensive regulatory controls that are in place and the low public doses being achieved at reactors ensure that the radiological impacts to the environment will remain small during the term of a renewed license. The maximum additional on-site land that may be required for low-level waste storage during the term of a renewed license and associated impacts will be small. Nonradiological impacts on air and water will be negligible. The radiological and nonradiological environmental impacts of long-term disposal of low-level waste from any individual plant at licensed sites are small. In addition, the Commission concludes that there is reasonable assurance that sufficient low-level waste disposal capacity will be made available when needed for facilities to be decommissioned consistent with NRC decommissioning requirements.
Mixed waste storage and disposal	1	SMALL. The comprehensive regulatory controls and the facilities and procedures that are in place ensure proper handling and storage, as well as negligible doses and exposure to toxic materials for the public and the environment at all plants. License renewal will not increase the small, continuing risk to human health and the environment posed by mixed waste at all plants. The radiological and nonradiological environmental impacts of long-term disposal of mixed waste from any individual plant at licensed sites are small. In addition, the Commission concludes that there is reasonable assurance that sufficient mixed waste disposal capacity will be made available when needed for facilities to be decommissioned consistent with NRC decommissioning requirements.
On-site spent fuel	1	SMALL. The expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated on site with small environmental effects through dry or pool storage at all plants if a permanent repository or monitored retrievable storage is not available.
Nonradiological waste	1	SMALL. No changes to generating systems are anticipated for license renewal. Facilities and procedures are in place to ensure continued proper handling and disposal at all plants.

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]—Continued

Issue	Category [2]	Findings [3]
Transportation	2	Table S–4 of this Part contains an assessment of impact parameters to be used in evaluating transportation effects in each case. See § 51.53(c)(3)(ii)(M).
Decommissioning		
Radiation doses	1	SMALL. Doses to the public will be well below applicable regulatory standards regardless of which decommissioning method is used. Occupational doses would increase no more than 1 man-rem caused by buildup of long-lived radionuclides during the license renewal term.
Waste management	1	SMALL. Decommissioning at the end of a 20-year license renewal period would generate no more solid wastes than at the end of the current license term. No increase in the quantities of Class C or greater than Class C wastes would be expected.
Air quality	1	SMALL. Air quality impacts of decommissioning are expected to be negligible either at the end of the current operating term or at the end of the license renewal term.
Water quality	1	SMALL. The potential for significant water quality impacts from erosion or spills is no greater whether decommissioning occurs after a 20-year license renewal period or after the original 40-year operation period, and measures are readily available to avoid such impacts.
Ecological resources	1	SMALL. Decommissioning after either the initial operating period or after a 20-year license renewal period is not expected to have any direct ecological impacts.
Socioeconomic impacts	1	SMALL. Decommissioning would have some short-term socioeconomic impacts. The impacts would not be increased by delaying decommissioning until the end of a 20-year relicense period, but they might be decreased by population and economic growth.
Environmental Justice		
Environmental justice [6]	[4] NA	NONE. The need for and the content of an analysis of environmental justice will be addressed in plant-specific reviews.[6]

[1] Data supporting this table are contained in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (May 1996).

[2] The numerical entries in this column are based on the following category definitions:

Category 1: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown:

(1) The environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic;

(2) A single significance level (i.e., small, moderate, or large) has been assigned to the impacts (except for collective off site radiological impacts from the fuel cycle and from high level waste and spent fuel disposal); and

(3) Mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are likely not to be sufficiently beneficial to warrant implementation.

The generic analysis of the issue may be adopted in each plant-specific review.

Category 2: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown that one or more of the criteria of Category 1 cannot be met, and therefore additional plant-specific review is required.

[3] The impact findings in this column are based on the definitions of three significance levels. Unless the significance level is identified as beneficial, the impact is adverse, or in the case of ''small,'' may be negligible. The definitions of significance follow:

SMALL—For the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small as the term is used in this table.

MODERATE—For the issue, environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.

LARGE—For the issue, environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

For issues where probability is a key consideration (i.e., accident consequences), probability was a factor in determining significance.

[4] NA (not applicable). The categorization and impact finding definitions do not apply to these issues.

[5] If, in the future, the Commission finds that, contrary to current indications, a consensus has been reached by appropriate Federal health agencies that there are adverse health effects from electromagnetic fields, the Commission will require applicants to submit plant-specific reviews of these health effects as part of their license renewal applications. Until such time, applicants for license renewal are not required to submit information on this issue.

[6] Environmental Justice was not addressed in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' because guidance for implementing Executive Order 12898 issued on February 11, 1994, was not available prior to completion of NUREG–1437. This issue will be addressed in individual license renewal reviews.

Dated at Rockville, Maryland, this 11th day of December, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–31945 Filed 12–17–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 23

[Docket No. 96–28]

RIN 1557–AB45

Leasing

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its rules governing the personal property lease financing transactions of national banks. This final rule, which is another component of the OCC's Regulation Review Program, updates and streamlines the rules. The final rule is substantively similar to the OCC's proposal but incorporates modifications reflecting suggestions made by commenters and further clarifies and simplifies the rule.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Morris Morgan, Credit and Management Policy, Chief National Bank Examiner's Office 202/874–5170; Jacqueline Lussier, Senior Attorney, Legislative and Regulatory Activities 202/874–5090, Aline J. Henderson, Senior Attorney, Bank Activities and Structure, Chief Counsel's Office 202/874–5300, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Introduction

The OCC is revising 12 CFR part 23, which governs personal property lease financing transactions by national banks. This final rule is another component of the OCC's Regulation Review Program. The principal goal of the Program is to review all of the OCC's rules with a view toward eliminating or revising provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another important goal is to clarify regulations to more effectively convey the standards the OCC seeks to apply.

As the OCC indicated in its notice of proposed rulemaking (proposal), the agency's experience suggests that, while a wholesale substantive rewrite of part 23 is not warranted,[1] changes to improve clarity and to provide some additional flexibility would be appropriate. See 60 FR 46246 (Sept. 6, 1995). Accordingly, the proposal shortened and streamlined part 23; reorganized many of its provisions; added paragraph headings; and conformed its style to that of the OCC's other rules. In addition, the OCC identified and specifically requested comment on several areas where substantive changes to the regulation might be appropriate, depending on the responses received.

The OCC received 11 comments in response to the proposal, which the OCC has carefully considered in preparing this final rule. The commenters included national banks, a national bank subsidiary, and trade associations representing both banks and leasing companies. The commenters generally supported the proposal, and a few suggested further modifications or improvements. The final rule incorporates suggestions made by some of the commenters, and the OCC has made additional changes to clarify and simplify the regulatory text. The final rule also makes other minor technical changes.

The *Discussion* portion of this preamble contains a section-by-section description of the final rule and the significant changes from the proposed version. A derivation table showing modifications from the former part 23 appears at the conclusion of this preamble.

Background

National banks may engage in leasing activities pursuant to two independent sources of authority. First, under 12 U.S.C. 24 (Seventh), a national bank may acquire tangible and intangible personal property for the purpose of, or in connection with leasing that property when the lease is the functional equivalent of a loan (Section 24 (Seventh) Leases).[2] The OCC has interpreted the functional equivalency requirement to mean that a Section 24 (Seventh) Lease must be a ''net,'' ''full-payout'' lease and any unguaranteed portion of the estimated residual value of the leased property must not exceed 25% of the original cost of the property. The ''net'' lease requirement means that the lessor national bank may not be obligated to provide specified services such as repairs or maintenance, or purchase insurance on the lessee's behalf in connection with the leased property. The ''full-payout'' requirement means that the bank must expect to recover the full costs of acquiring the property to be leased and financing the leasing transaction from sources that include rentals, estimated tax benefits, and the estimated residual value of the property at the end of the lease. For a Section 24(Seventh) Lease, however, the bank may rely on the unguaranteed portion of the estimated residual value of the leased property only to a limited extent—not more than 25% of the original cost of the property. There is no percentage-of-assets limit on a national bank's investment in Section 24 (Seventh) Leases.

In 1987, Congress gave national banks a second, explicit source of authority to engage in personal property lease financing. The Competitive Equality Banking Act (CEBA)[3] amended 12 U.S.C. 24 by adding paragraph Tenth, which allows a national bank to invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, and furniture, for lease financing transactions (CEBA Leases). Investment in personal property to be leased under the authority of 12 U.S.C. 24(Tenth) may not exceed 10 percent of a national bank's assets. A CEBA Lease also must be a ''net'' lease and a ''full-payout'' lease, but is not subject to a maximum estimated residual value limit. Both Section 24(Seventh) Leases and CEBA Leases are governed by standards set forth in part 23.

Discussion

Subpart A—General Provisions

Authority, Purpose, and Scope (§ 23.1)

The proposal retained the authority provision of the former regulation but added paragraphs describing the purpose of part 23 and the scope of its respective subparts. The final rule retains the structure described in the scope section of the part 23 proposal.

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[1] The OCC first adopted part 23 in mid-1991. 56 FR 28314 (June 20, 1991). Part 23 replaced an earlier OCC interpretive ruling on lease financing transactions, which had been codified at 12 CFR 7.3400.

[2] *See M & M Leasing Corp.* v. *Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) (upholding national banks' authority under 12 U.S.C. 24(Seventh) to engage in personal property lease financing transactions if the lease is the functional equivalent of a loan) (*M&M Leasing*).

[3] Pub. L. 100–86, sec. 108, 101 Stat. 552, 579 (Aug. 10, 1987). See also S. Rep. No. 19, 100th Cong., 1st Sess. 43 (1987) (explanation of purpose of CEBA's expansion of national banks' leasing authority).

Subpart A contains definitions and standards applicable to both Section 24 (Seventh) Leases and CEBA Leases. Subpart B contains standards unique to CEBA Leases, and subpart C contains standards unique to Section 24 (Seventh) Leases. The scope section of the final rule also is revised to state that part 23 applies to the acquisition of personal property by a national bank for the purpose of, or in connection with, the leasing of that property.

Definitions (§ 23.2)

The proposal added to part 23 a new section defining significant terms, including *CEBA Lease, conforming lease, off-lease property,* and *Section 24 (Seventh) Lease,* for the purpose of making the operative provisions of the regulation shorter and easier to read. These terms are adopted substantially as proposed. The OCC has shortened the definition of the term *net lease* by removing the explicit acknowledgment that a national bank may lease improvements and additions to the leased property to the lessee in accordance with any applicable residual value requirements. The OCC believes that this portion of the text was unnecessary because the activity it describes is not otherwise prohibited by the regulation. Thus, the removal of this language does not substantively alter a national bank's ability to lease improvements and additions to its lessees.

As is explained in this discussion under ''Investment in personal property,'' the final rule permits a national bank to acquire property for leasing purposes even if the bank has not entered into a conforming lease, a commitment to enter into a conforming lease, or an indemnification agreement. For prudential reasons, however, this authority is subject to an aggregate limit based on the bank's capital and surplus. Accordingly, the OCC has added to the final rule a definition of the term *capital and surplus* that is consistent with the way this term is defined in other OCC regulations, such as 12 CFR part 32, which governs national banks' lending limits.

The OCC has also added to this section a revised definition of the term affiliate that cross-references the definition of that term at § 23.6. The definition had appeared in § 23.7 of the proposal.

The OCC proposed to define a *full-payout lease* as a lease financing transaction in which any unguaranteed portion of the estimated residual value relied upon by the bank to yield the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25 percent of the original cost of the property to the lessor. The OCC asked commenters to address whether the 25 percent limit contained in this definition should be increased or modified. As discussed in the proposal, the OCC had selected the 25 percent limit in 1979 based in part on its experience at that time in examining and supervising banks engaged in Section 24(Seventh) lease financing activities.[4] Congress subsequently gave national banks authority to enter into CEBA Leases, which are not subject to a maximum residual value limit (though the aggregate cost of the personal property acquired for the purpose of CEBA Lease transactions is restricted in aggregate amount to 10 percent of a national bank's total consolidated assets). The proposal noted, however, that national banks did not appear to be engaged in CEBA leasing to the full extent of their statutory authority and it asked whether, under these circumstances, a change in the residual value limit for Section 24(Seventh) Leases was appropriate. Commenters supporting a more flexible limit were asked to identify any increased risk that would accompany a new limit and to discuss how the OCC should address that risk.

Five commenters addressed this issue. The majority favored no modification to the limit, pointing out that whenever it is appropriate to exceed the 25 percent limit, banks may use their CEBA leasing authority instead. Based on the comments and the OCC's more recent experience with national banks' lease financing activities, the OCC has concluded that the 25 percent residual value limit for Section 24(Seventh) Leases does not inhibit national banks from competing effectively with other providers of lease financing. The final rule retains the 25 percent residual value requirement for Section 24(Seventh) Leases,[5] but the requirement is relocated to subpart C, which applies only to Section 24(Seventh) Leases.

The OCC has concluded that combining the cost recovery requirement with the residual value limit, which was the approach taken in the proposed version of part 23, is confusing because it obscures the fact that a bank must receive its acquisition and financing costs in order for any lease, including a CEBA Lease, to be economically viable. The OCC believes that part 23 will be easier to read and to use if the requirement for cost recovery is separately stated in the subpart applicable to both Section 24(Seventh) Leases and CEBA Leases, and the percentage limit on residual value continues to appear in the subpart addressing Section 24(Seventh) Leases, which are the only leases subject to that limit. Accordingly, the OCC has revised the proposed definition of the term *full-payout lease.* The final rule defines that term to specify the sources on which a national bank may rely to recover both its investment in the leased property and the estimated cost of financing the property over the lease term. The 25 percent residual value limit applicable to Section 24(Seventh) Leases is relocated to § 23.21 of the final rule.

Lease Requirements (§ 23.3)

The former rule and proposed § 23.3 both required that a national bank entering into a lease financing transaction must reasonably expect to recover its full investment in the leased property, as well as its estimated financing costs over the life of the lease, from three sources: rentals, estimated tax benefits, and the estimated residual value of the leased property. The cost recovery requirement applies both to CEBA Leases and to Section 24(Seventh) Leases. As described in the preceding section, the final rule defines the term *full-payout lease* to specify these three sources of cost recovery. Thus, § 23.3(a) of the final rule simply states the requirement that all of a national bank's leases must be full-payout leases. These changes in the final rule—the revised definition of *full-payout lease,* the relocation of the 25 percent residual value limit to subpart C, and the statement of the full-payout requirement in § 23.3(a)—do not change the substantive effect of the revisions as proposed.

The proposal also added to the regulation a new paragraph containing an explicit statement of the requirement that a national bank may engage in a lease financing transaction, and in activities incidental to the transaction, provided the lease is a net lease. The incidental activities clause in proposed

[4] See 44 FR 22388, 22390 (April 13, 1979) (adoption of interpretive rule establishing estimated residual value limit of 25 percent for leases that serve as the functional equivalent of loans).

[5] The 25 percent limit is the same as the limit that the Federal Reserve Board (FRB) currently applies to full-payout personal property leasing by bank holding companies (BHCs) and their subsidiaries under Regulation Y (addressing the permissible non-banking activities of BHCs). See 12 CFR 225.25(b)(5). The FRB, however, has recently proposed revisions to Regulation Y that could result in changes to its personal property leasing standards. See 61 FR 47242, 47251–52, 47273–74 (Sept. 6, 1996).

The Office of Thrift Supervision has recently increased its analogous residual value limit from 20 percent to 25 percent. See 61 FR 50951, 50960 (Sept. 30, 1996).

§ 23.4(a) reflected the OCC's long-standing interpretations authorizing national banks to engage in activities incidental to leasing. The proposal also confirmed the OCC's position that there is no safety or soundness reason for treating activities incidental to leasing differently depending on the underlying source of statutory authority for the leasing transaction, and that a national bank may therefore engage in approved incidental activities with respect both to Section 24(Seventh) Leases and CEBA Leases. Since both the ''full-payout'' requirement and the ''net'' lease requirement apply to Section 24(Seventh) Leases and CEBA Leases, § 23.3(a) of the final rule contains the general requirement that a national bank may acquire personal property for the purpose of, or in connection with leasing that property, provided the lease qualifies as a full-payout lease and a net lease. Section 23.3(a) also provides that national banks may engage in activities that are incidental to permissible personal property acquisition and leasing transactions.

In the proposal, the OCC did not include a list of permissible activities incidental to leasing, but it invited commenters to address the desirability of retaining a case-by-case approach to determining permissible incidental activities. Six commenters responded to this request. All but one commenter urged that the OCC retain the case-by-case approach because any ''laundry list'' appearing in the regulation would become out of date quickly. The OCC agrees with the commenters that a list would soon become obsolete and will therefore retain the case-by-case approach.

The OCC also requested comment on whether it should, on a case-by-case basis, permit national banks to acquire and lease real estate when the real estate acquisition and lease is incidental to a personal property lease financing transaction. The incidental leasing of real estate could occur, for example, in a so-called ''facility'' leasing transaction, which one commentator has described as follows:

> [A] facility is a ''stand-alone'' complex that functions either as a separate operating unit or as a discrete component of an integrated operating system. A facility has at least four basic components: An interest in the real property site upon which the rest of the facility is situated; improvements to the site, usually including a structure of some sort; equipment or other tangible personal property, usually the asset actually being financed in the transaction; and intangible property such as contracts, licenses, or other ancillary rights and benefits that are necessary or desirable for the operation or support of the other components of the facility. A facility is practicably immovable as an entirety.[6]

The six commenters who addressed this issue urged that the OCC permit real estate leasing if it is incidental to the lease financing of personal property. The commenters asserted that, in a competitive leasing environment, national banks and national bank-owned leasing companies suffer a competitive disadvantage with respect to certain types of transactions—particularly facility lease financing arrangements—if they are prohibited from acquiring and leasing real estate in all circumstances.

The commenters also thought that acquiring and leasing real estate as a component of a personal property lease financing transaction would better protect the bank's collateral interest in the leased property and therefore enhance the safety and soundness of the transaction. For example, they said, improvements to fuel storage facilities, manufacturing facilities or other installed equipment have a greater collateral value ''in place, in use'' than they would have if they were removed and re-sold in the event of default. Thus, if a lessee defaults under a personal property lease of this type, a lessor bank having the right to foreclose on and sell or re-lease the personal property in place on the site or in the building is in a better financial position than a bank that must remove the equipment and dispose of it separately.

The OCC agrees that under some circumstances real estate leasing may be an incidental component of a personal property leasing transaction. Therefore, consistent with its decision to retain a case-by-case approach to activities incidental to leasing generally, the OCC will determine the permissibility of personal property lease financing transactions that have a real estate leasing component based upon the facts of a given lease financing transaction (or multiple lease financing transactions, if they present essentially similar facts). This will enable the OCC to review any safety or soundness or other supervisory concerns that particular transactions may present.

The OCC notes that the activities incidental to leasing that it has authorized to date for national banks acting as lessors include providing management, marketing, and administrative services and offering credit life insurance to lessees.[7] The OCC has also authorized national banks to engage in incidental activities with respect to lease financing transactions to which the bank is not a party. These activities include providing lease consulting services such as financial advice; providing management, brokerage, and finder services; and performing lease servicing for third parties.[8]

Finally, § 23.3(b) includes provisions (proposed as § 23.4(b)) specifying the conditions under which a national bank may take appropriate action to protect its interests and the distress clause permitting a national bank to take certain actions to salvage or protect its investment. Section 23.3(b) of the final rule has been shortened and slightly revised, but these changes do not change the substantive effect of the provision.

Investment in Personal Property (§ 23.4)

Like the former rule, proposed § 23.5(a) specifically authorized a national bank to acquire personal property to be leased after the bank had entered into either a legally binding agreement indemnifying the bank against loss in connection with the acquisition or a legally binding commitment to enter into a conforming lease. The purpose of this provision was to prevent the speculative acquisition of personal property. The OCC believes, however, that measures other than flatly prohibiting a national bank from acquiring property before the leasing arrangements are essentially completed will provide adequate safeguards against speculation. Accordingly, § 23.4(b) of the final rule authorizes a national bank to acquire property to be leased in the absence of a commitment to enter into a conforming lease, or an indemnification agreement, if the bank satisfies certain conditions demonstrating that the acquisition of property is not speculative. These

[6] Anthony D. Schlesinger, Special Concerns in Facility Leveraged Lease Transactions, 1 *Equipment Leasing—Leveraged Leasing* 987, 987 (B. Fritch, A. Reisman & I. Shrank eds. 1988) (Practicing Law Institute Publication No. A3–1406).

[7] See, e.g., Letter from H. Joe Selby, First Deputy Comptroller for Operations, Nov. 24, 1976 (unpublished); Letter from Peter Liebesman, Assistant Director, Legal Advisory Services Division, Jan. 14, 1985 (unpublished). Copies of unpublished OCC staff interpretive letters are available (in redacted form) upon request from the Communications Division, 250 E Street, SW., Washington, DC 20219 (202) 874–4700.

[8] See, e.g., 12 CFR 7.1002; OCC Interpretive Ltr. No. 567 (Oct. 29, 1991) reprinted in [1991–92 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶83,337; Letter from Wallace S. Nathan, District Counsel, Oct. 28, 1985 (unpublished); Letter from Peter Liebesman, Assistant Director, Legal Advisory Services Division, June 15, 1981 (unpublished). See also OCC Interpretive Ltr. No. 741 (Aug. 19, 1996) reprinted in [Current Binder] Fed. Banking L. Rep. (CCH) ¶81–105. Copies of the unpublished letters are available from the Communications Division, see note 7 above.

conditions require that: (1) The acquisition of the property either be consistent with the leasing business then conducted by the bank or with a business plan for the expansion of the bank's existing leasing business or for entry into the leasing business; and (2) the bank's aggregate investment in property under this provision not exceed 15 percent of the bank's capital and surplus.

The 15 percent limit applies to all property acquired under § 23.4(b) of the final rule, whether the lease will be entered into pursuant to 12 U.S.C. 24(Seventh) or 24(Tenth). However, property acquired under this provision does not count toward the 10 percent volume limitation on CEBA Leases until the bank enters into a conforming lease, a legally binding commitment to lease, or an indemnification agreement pursuant to § 23.10 of the final rule.

The OCC has also added to § 23.4(a) of the final rule an explicit statement that a national bank may acquire property after entering into a conforming lease, as well as after entering into a lease commitment or an indemnification agreement. The OCC has incorporated this change, which was requested by a commenter, to clarify the flexibility available under the regulation.

The former rule required that a national bank dispose of or re-lease off-lease property as soon as practicable, but not later than two years from the date the lease expires. Proposed § 23.2(e) defined *off-lease* property as property that reverts to a bank's possession or control upon the expiration of a lease or upon the default of the lessee. Proposed § 23.5(b) was substantively the same as the former rule, but it specifically provided that the two-year holding period runs either from the date the lease expires (including any renewals or extensions with the same lessee) or the date of the lessee's default. Both Section 24(Seventh) Leases and CEBA Leases are subject to this holding period limitation.

Extension of off-lease holding period. The preamble to the proposal indicated that the OCC was considering whether to extend the holding period for off-lease property but lacked data on the experiences national banks have had in attempting to liquidate or re-lease specific kinds of off-lease property within the two-year holding period. The proposal did not change the holding period but requested comment on four issues:

(1) Should the holding period be extended and, if so, should it be extended for all categories of assets or only for particular categories?

(2) If the holding period were extended, what would be a reasonable additional time period, in general or for particular categories of assets?

(3) What evidence supports extension of the holding period?

(4) If the holding period were extended, how should the OCC ensure that banks do not use the longer period to retain property for essentially speculative purposes?

The proposal also invited banks to provide specific comment on their experiences in attempting to sell or re-lease specific kinds of off-lease personal property with respect to the issue of extending the holding period.

Seven commenters responded. One commenter thought that in most cases the two-year holding period is appropriate. The others offered various suggestions for liberalizing the regulation, including: Extending the holding period for specific assets—such as airplanes, rail cars, vessels, oil rigs, machine tools, manufacturing equipment—characterized as ''historically cyclic''; extending the holding period generally but with conditions, such as requiring banks to make diligent sales efforts or obtain annual appraisals of the off-lease assets; substituting the holding period regulations applicable to other real estate owned property (OREO) for the existing provision;[9] or simply extending the holding period in cases of market distress.

In light of the discussion provided by the commenters on this point, the OCC concludes that it is appropriate to provide for a longer holding period for off-lease property. Section 23.4(c) of the final rule adopts a five-year holding period generally and provides for the holding period to be extended for up to an additional five years if the bank provides a clearly convincing demonstration as to why any additional holding period is necessary. The initial five-year rule is consistent with the time prescribed for the disposition of OREO, but the OCC expects that a bank will usually be able to dispose of off-lease personal property more quickly than real estate. Accordingly, the OCC will require a ''clearly convincing'' demonstration of necessity in order to justify any extension of the holding period for off-lease property beyond five years.

Section 23.4(c) of the final rule retains the requirement that off-lease property be valued at the lower of fair market or book value. The OCC notes that, consistent with generally accepted accounting principles, this valuation should occur promptly after the property comes off-lease.

Commencement of off-lease holding period. As indicated earlier in this discussion, the holding period for off-lease property commences on either the date of expiration of the lease or the date of the lessee's default, depending on the reason that the national bank takes possession or control of the leased property. This language conveys that the holding period begins when the bank is in a position to dispose of or re-lease the property, that is, when it takes possession or control.

Five commenters, however, asked for further clarification on when the holding period commences in the event the lessee defaults before the expiration of the term of the lease. Some commenters pointed out that while the preamble to the proposal and the proposed definition of *off-lease property* refer to a national bank's taking possession or control of the leased property, the proposed regulatory text itself did not contain the ''possession or control'' language. Moreover, as the commenters pointed out, *actual* possession or control of an asset alone may not allow the bank to dispose of it or re-lease it. In foreclosure or bankruptcy situations, the bank may need to obtain a court order establishing its *legal* right to do so.

The OCC agrees with the commenters that the provision requires clarification and adjustment to cover situations such as bankruptcy or foreclosure. Section 23.4(c) of the final rule therefore provides that the OCC will measure the five-year period beginning on the date that the national bank obtains the legal right to possession or control of the asset. This date could be the date that the lease expires or the date that the lessee defaults if, for example, the national bank has a clear contractual right to repossess the property at that time and the lessee does not physically impede it from doing so. Where the bank must establish its legal right to the property, however, the five-year period will begin when the bank has completed that step. The OCC notes that this treatment is consistent with the way it administers the holding period for OREO.[10]

[9] 12 U.S.C. 29 requires a national bank to dispose of OREO within five years from the date of acquisition and authorizes the OCC, under certain circumstances, to grant a bank an additional five years in which to dispose of the property.

[10] *See* 12 CFR 34.82 (b) and (c) (five-year holding period for OREO does not begin until after ownership of property is transferred to the bank; in foreclosure situations in states with statutory rights of redemption, holding period does not begin until statutory redemption period has expired).

Section 23.4(d) of the final rule reflects minor technical changes from the proposal to conform with the revised off-lease holding period provision in § 23.4(c).

Requirement for Separate Records (§ 23.5)

Proposed § 23.6 retained the requirement in the former rule that national banks maintain separate records for CEBA Leases and Section 24(Seventh) Leases. The OCC received no comments on this provision and adopts it as proposed, except to renumber it as § 23.5.

Application of Lending Limits; Restrictions on Transactions With Affiliates (§ 23.6)

Like the former rule, proposed § 23.7 subjected lease financing transactions to lending limits and transactions-with-affiliates restrictions. The proposal, however, clarified that the transactions-with-affiliates restrictions apply only if the lessee is an affiliate of the lessor bank. In any other case, lending limits restrictions apply. The proposal also retained the reservation of the OCC's authority to impose other limits or restrictions.

One commenter requested that the OCC state specifically that nonrecourse debt is excluded from the value of the leased property in computing the appropriate lending limit position. This commenter noted that although the regulatory text did not address the point, the preamble to the former rule specifically addressed the issue.[11]

This issue typically arises in leveraged lease transactions, that is, transactions in which a national bank borrows from a third-party creditor a portion of the funds necessary to purchase the property to be leased. In these cases, the third-party creditor's loan to the bank is often on a nonrecourse basis, so that the creditor looks only to the lease payments and its security interest in the leased property as the source of repayment for its loan to the bank and does not rely on the general credit of the bank. In this type of transaction, the bank's exposure to loss in the event of the lessee's default is mitigated to the extent that the bank has used outside funding to finance the transaction. For this reason, the OCC permits a national bank to use the recorded investment in a lease net of any nonrecourse debt the bank has incurred to finance the acquisition of the asset to be leased, for the purpose of measuring whether the bank's leases comport with the appropriate lending limits. This treatment is also consistent with generally accepted accounting principles.

The commenter is therefore correct about the treatment of nonrecourse debt. The final rule states that for the purpose of measuring compliance with the lending limits, a national bank records the investment in a lease net of any nonrecourse debt the bank has incurred to finance the acquisition of the leased asset. The OCC has revised § 23.7 to this effect, and renumbered it as § 23.6 in the final rule.

Applicability of Consumer Leasing Act (Removed)

The former rule stated that nothing in part 23 could be construed to be in conflict with the duties, liabilities, and standards imposed by the Consumer Leasing Act of 1976, 12 U.S.C. 1667 *et seq.* (CLA). The OCC proposed to remove this provision because other consumer protection laws and regulations may also apply to personal property lease financing activities, making the cross-reference potentially misleading and confusing. The OCC received no comments on this portion of the proposal and § 23.6 of the former rule is removed. This change does not affect the applicability of the CLA or any other consumer credit laws to national banks' lease financing activities, however. National banks still must know and comply with the full range of requirements that govern these activities.

Subpart B—CEBA Leases

Provisions Applicable to CEBA Leases (§§ 23.10, 23.11, and 23.12)

Proposed §§ 23.8, 23.9, and 23.10 contained the requirements applicable to CEBA Leases, including a statement of the general rule authorizing investment in personal property in connection with CEBA Leases, the limits placed on a national bank's exercise of its CEBA leasing authority, and a transition rule for CEBA Leases entered into after CEBA's enactment but before the effective date of the OCC's final implementing rule in 1991. The substance of these provisions as proposed was the same as the former rule.

The OCC received one comment on these provisions. The commenter who asked that the rule specifically address the exclusion of nonrecourse debt in connection with the computation of lending limits for leases also asked that nonrecourse debt be specifically excluded in measuring compliance with the 10 percent of assets limitation applicable to CEBA Leases. The OCC has permitted this treatment since it promulgated part 23 in 1991. Section 23.10 of the final rule states this position.

This commenter also asked whether the OCC intended any meaningful distinction between ''tangible personal property'' as used in proposed § 23.8 and ''personal property'' as used in proposed § 23.11. The reference to ''tangible personal property'' in proposed § 23.8 derives from the statutory language authorizing CEBA Leases. Section 24(Tenth) requires that CEBA Leases must be leases for tangible personal property. A national bank wishing to acquire and lease intangible personal property, such as patents, copyrights or other forms of intellectual property, must rely on its authority under section 24(Seventh). For these reasons, the final rule continues to use the phrase ''tangible personal property'' with respect to CEBA Leases. With respect to Section 24(Seventh) Leases, the final rule refers to tangible or intangible personal property. The OCC received no comments on proposed §§ 23.9 and 23.10, and adopts them as proposed, except to renumber them as §§ 23.11 and 23.12.

Subpart C—Section 24(Seventh) Leases

General rule (§ 23.20)

Proposed § 23.11 stated the general rule authorizing national banks to engage in lease financing pursuant to 12 U.S.C 24(Seventh). The OCC received no comments on this section, other than the request for clarification, noted in this discussion under ''Provisions applicable to CEBA Leases,'' with respect to the use of two different terms in proposed §§ 23.8 and 23.11. The OCC adopts this section with minor changes from the proposal, except that it removes as redundant the requirements in proposed § 23.11 that the lease must be a full-payout and net lease, and renumbered the section as § 23.20.

Estimated Residual Value (§ 23.21)

Proposed § 23.12 contained provisions that apply to a national bank's reliance on or estimate of residual value in Section 24(Seventh) leasing transactions. These provisions were substantively the same as the requirements of the former rule, including: (1) A provision that the amount of any estimated residual value guaranteed by a manufacturer, the lessee, or other third party that is not an affiliate of the bank may exceed 25 percent of the original cost of the property if the bank determines that the guarantor has the resources to meet the

[11] *See* 56 FR 28314, 28316 (June 20, 1991) (preamble to part 23 final rule).

guarantee and can document its determination; (2) a requirement that the estimated residual value amounts be reasonable given the type of property leased and other relevant circumstances, so that realization of the lessor bank's full investment and the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item; and (3) a provision that, when a bank leases personal property to a government entity, its estimates of residual value may be based on future transactions that it reasonably anticipates will occur.

The OCC received no comments on this section. The OCC made the following revisions in the final rule: Renumbered it as § 23.21, moved the 25% residual value limit that had appeared in proposed § 23.2(c) to this section for the reason discussed in this preamble under ''Definitions,'' and removed the last sentence of proposed § 23.12(a), which stated that the bank must depend primarily on the creditworthiness of the lessee (and any guarantor) and not on the residual value of the leased property. The OCC removed this sentence because it is redundant in light of the relocation of the 25 percent limit which appears in the final version of this section. The restrictions on Section 24(Seventh) leasing in subparts A and C are designed to ensure that the bank depends primarily on the credit of the lessee, and not on the residual value of the leased property at the end of the lease term.

Transition Rule (§ 23.22)

The former rule and proposed § 23.13 provide that leases executed before June 12, 1979, which was the effective date of the OCC's final rule amending 12 CFR 7.3400 to reflect the Ninth Circuit's decision in the *M&M Leasing* case, are not subject to part 23, and prescribe rules for renewing those leases. The OCC received no comments on this section and it remains unchanged, except for renumbering it as § 23.22.

DERIVATION TABLE

[This table directs readers to the provision(s) of the former regulation, if any, upon which the final rule is based.]

Revised provision	Original provision	Comments
§ 23.1	§ 23.1(a)	Modified.
§ 23.2(a), (b), (c), (d), (g), (h).		Added.
§ 23.2(e)	§ 23.1(b)	Modified.
§ 23.2(f)	§ 23.2(a)	Modified.
§ 23.3(a)		Added.
§ 23.3(b)	§ 23.2(b), (c), (d).	Modified.
§ 23.4(a)	§ 23.3(a)	Modified.
§ 23.4(b)		Added.
§ 23.4(c)	§ 23.3(b)	Modified.
§ 23.4(d)	§ 23.3(c)	Modified.
§ 23.5	§ 23.4	Modified.
§ 23.6	§ 23.5	Modified.
	§ 23.6	Removed.
§ 23.10	§ 23.7	Modified.
§ 23.11	§ 23.8	Modified.
§ 23.12	§ 23.9	Modified.
§ 23.20	§ 23.10	Modified.
§ 23.21	§ 23.11	Modified.
§ 23.22	§ 23.12	Modified.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Paperwork Reduction Act of 1995

The OCC invites comments on:

(1) Whether the collections of information contained in this notice of final rule are necessary for the proper performance of OCC functions, including whether the information has practical utility;

(2) The accuracy of the estimate of the burden of the information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Respondents/recordkeepers are not required to respond to the foregoing collections of information unless this displays a currently valid OMB control number.

The collections of information contained in this final rule have been approved by the Office of Management and Budget (OMB) through June 30, 1997, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under OMB Control No. 1557–0206. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–0206), Washington, DC 20503, with a copy to the Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. The OCC will submit the collections of information contained in this final rule for renewal of OMB approval following publication of this final rule.

The collections of information in this final rule are found in 12 CFR 23.4(c) and 23.5. These collections of information are necessary in order for a national bank to submit a request to the OCC for permission to extend the holding period of off-lease property, to maintain records according to generally accepted accounting principles and Federal law, and to ensure bank safety and soundness. The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 2.8.

Estimated number of respondents and/or recordkeepers: 660.

Estimated total annual reporting and recordkeeping burden: 1,820.

Start-up costs to respondents: None.

Executive Order 12866

OMB has concurred with the OCC's determination that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. As discussed in the preamble, this final rule has the effect of reducing burden and increasing the efficiency of lease financing transactions undertaken by national banks.

List of Subjects in 12 CFR Part 23

Banks, banking, Lease financing transactions, Leasing, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 23 of chapter I of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 23—LEASING

Subpart A—General Provisions

Sec.
23.1 Authority, purpose, and scope.
23.2 Definitions.
23.3 Lease requirements.
23.4 Investment in personal property.
23.5 Requirement for separate records.
23.6 Application of lending limits; restrictions on transactions with affiliates.

Subpart B—CEBA Leases

23.10 General rule.
23.11 Lease term.
23.12 Transition rule.

Subpart C—Section 24(Seventh) Leases

23.20 General rule.
23.21 Estimated residual value.
23.22 Transition rule.

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 24(Tenth), and 93a.

Subpart A—General Provisions

§ 23.1 Authority, purpose, and scope.

(a) *Authority.* A national bank may engage in personal property lease financing transactions pursuant to 12 U.S.C. 24(Seventh) or 12 U.S.C. 24(Tenth).

(b) *Purpose.* The purpose of this part is to set forth standards for personal property lease financing transactions authorized for national banks.

(c) *Scope.* This part applies to the acquisition of personal property by a national bank for the purpose of, or in connection with, the leasing of that property.

§ 23.2 Definitions.

(a) *Affiliate* means an affiliate as described in § 23.6.

(b) *Capital and surplus means:*

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

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (b)(1) of this section, as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

(c) *CEBA Lease* means a personal property lease authorized under 12 U.S.C. 24(Tenth).

(d) *Conforming lease* means:

(1) A CEBA Lease that conforms with the requirements of subparts A and B of this part; or

(2) A Section 24(Seventh) Lease that conforms with the requirements of subparts A and C of this part.

(e) *Full-payout lease* means a lease in which the national bank reasonably expects to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from:

(1) Rentals;

(2) Estimated tax benefits; and

(3) The estimated residual value of the property at the expiration of the lease term.

(f) *Net lease* means a lease under which the national bank will not, directly or indirectly, provide or be obligated to provide for:

(1) Servicing, repair, or maintenance of the leased property during the lease term;

(2) Parts or accessories for the leased property;

(3) Loan of replacement or substitute property while the leased property is being serviced;

(4) Payment of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain required insurance; or

(5) Renewal of any license or registration for the property unless renewal by the bank is necessary to protect its interest as owner or financier of the property.

(g) *Off-lease property* means property that reverts to a national bank's possession or control upon the expiration of a lease or upon the default of the lessee.

(h) *Section 24(Seventh) Lease* means a personal property lease authorized under 12 U.S.C. 24(Seventh).

§ 23.3 Lease requirements.

(a) *General requirements.* A national bank may acquire personal property for the purpose of, or in connection with leasing that property, and may engage in activities incidental thereto, if the lease qualifies as a full-payout lease and a net lease.

(b) *Exceptions*—(1) *Change in condition.* If, in good faith, a national bank believes that there has been a change in condition that threatens its financial position by increasing its exposure to loss, then the bank may:

(i) Take reasonable and appropriate action, including the actions specified in § 23.2(f), to salvage or protect the value of the leased property or its interests arising under the lease; and

(ii) Acquire or perfect title to the leased property pursuant to any existing rights.

(2) *Provisions to protect the bank's interests.* A national bank may include any provision in a lease, or make any additional agreement, to protect its financial position or investment in the event of a change in conditions that would increase its exposure to loss.

(3) *Arranging for services by a third party.* A national bank may arrange for a third party to provide any of the services enumerated in § 23.2(f) to the lessee at the expense of the lessee.

§ 23.4 Investment in personal property.

(a) *General rule.* A national bank may acquire specific property to be leased only after the bank has entered into:

(1) A conforming lease;

(2) A legally binding written agreement that indemnifies the bank against loss in connection with its acquisition of the property; or

(3) A legally binding written commitment to enter into a conforming lease.

(b) *Exception.* A national bank may acquire property to be leased without complying with the requirements of paragraph (a) of this section, if:

(1) The acquisition of the property is consistent with the leasing business then conducted by the bank or is consistent with a business plan for expansion of the bank's existing leasing business or for entry into the leasing business; and

(2) The bank's aggregate investment in property held pursuant to this paragraph (b) does not exceed 15 percent of the bank's capital and surplus.

(c) *Holding period.* At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a national bank shall either liquidate the off-lease property or re-lease it under a conforming lease as soon as practicable. Liquidation or re-lease must occur not later than five years from the date that the bank acquires the legal right to possession or control of the property, except the OCC may extend the period for up to an additional five years, if the bank provides a clearly convincing demonstration why any additional holding period is necessary. The bank must value off-lease property at the lower of current fair market value or book value promptly after the property becomes off-lease property.

(d) *Bridge or interim leases.* During the holding period allowed by paragraph (c) of this section, a national bank may enter into a short-term bridge or interim lease pending the liquidation of off-lease property or the re-lease of the property under a conforming lease. A short-term bridge or interim lease must be a net lease, but need not

comply with any requirement of subpart B or C of this part.

§ 23.5 Requirement for separate records.

If a national bank enters into both CEBA Leases and Section 24(Seventh) Leases, the bank's records must distinguish the CEBA Leases from the Section 24(Seventh) Leases.

§ 23.6 Application of lending limits; restrictions on transactions with affiliates.

A lease entered into pursuant to this part is subject to the lending limits prescribed by 12 U.S.C. 84 or, if the lessee is an affiliate of the bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1. The OCC may also determine that other limits or restrictions apply. The term affiliate means an affiliate as defined in 12 U.S.C. 371c or 371c–1, as applicable. For the purpose of measuring compliance with the lending limits prescribed by 12 U.S.C. 84, a national bank records the investment in a lease net of any nonrecourse debt the bank has incurred to finance the acquisition of the leased asset.

Subpart B—CEBA Leases

§ 23.10 General rule.

Pursuant to 12 U.S.C. 24(Tenth) a national bank may invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for the purpose of, or in connection with leasing that property, if the aggregate book value of the property does not exceed 10 percent of the bank's consolidated assets and the related lease is a conforming lease. For the purpose of measuring compliance with the 10 percent limit prescribed by this section, a national bank records the investment in a lease entered into pursuant to this subpart net of any nonrecourse debt the bank has incurred to finance the acquisition of the leased asset.

§ 23.11 Lease term.

A CEBA Lease must have an initial term of not less than 90 days. A national bank may acquire property subject to an existing lease with a remaining maturity of less than 90 days if, at its inception, the lease was a conforming lease.

§ 23.12 Transition rule.

(a) *General rule.* A CEBA Lease entered into prior to July 22, 1991, may continue to be administered in accordance with the lease terms in effect as of that date. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.6, however, a national bank that enters into a new extension of credit to a customer, including a lease, on or after July 22, 1991, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a CEBA Lease that was entered into prior to July 22, 1991, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the CEBA Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith, and demonstrates by appropriate documentation, that renewal of the lease is necessary to avoid financial loss and to recover its investment in, and its cost of financing, the leased property.

Subpart C—Section 24(Seventh) Leases

§ 23.20 General rule.

Pursuant to 12 U.S.C. 24(Seventh) a national bank may invest in tangible or intangible personal property, including vehicles, manufactured homes, machinery, equipment, furniture, patents, copyrights, and other intellectual property, for the purpose of, or in connection with leasing that property, if the related lease is a conforming lease representing a noncancelable obligation of the lessee (notwithstanding the possible early termination of that lease).

§ 23.21 Estimated residual value.

(a) *Recovery of investment and costs.* A national bank's estimate of the residual value of the property that the bank relies upon to satisfy the requirements of a full-payout lease, for purposes of this subpart:

(1) Must be reasonable in light of the nature of the leased property and all circumstances relevant to the transaction; and

(2) Any unguaranteed amount must not exceed 25 percent of the original cost of the property to the bank.

(b) *Estimated residual value subject to guarantee.* The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or other third party may exceed 25 percent of the original cost of the property if the bank determines, and demonstrates by appropriate documentation, that the guarantor has the resources to meet the guarantee and the guarantor is not an affiliate of the bank.

(c) *Leases to government entities.* A bank's calculations of estimated residual value in connection with leases of personal property to Federal, State, or local governmental entities may be based on future transactions or renewals that the bank reasonably anticipates will occur.

§ 23.22 Transition rule.

(a) *Exclusion.* A Section 24(Seventh) Lease entered into prior to June 12, 1979, may continue to be administered in accordance with the lease terms in effect as of that date. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.6, however, a national bank that enters into a new extension of credit to a customer, including a lease, on or after June 12, 1979, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a Section 24(Seventh) Lease that was entered into prior to June 12, 1979, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the Section 24(Seventh) Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith, and demonstrates by appropriate documentation, that renewal of the lease is necessary to avoid financial loss and to recover its investment in, and its cost of financing, the leased property.

Dated: December 10, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–31967 Filed 12–17–96; 8:45 am]

BILLING CODE 4810–33–P

Office of Thrift Supervision

12 CFR Parts 545, 559, 560, 563, 567, 571

[No. 96–119]

RIN 1550–AA88

Subsidiaries and Equity Investments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS or agency) is today issuing a final rule updating and substantially streamlining its regulations and policy statements concerning subsidiaries and other subordinate organizations in which

savings associations have ownership interests (including operating subsidiaries and service corporations) and equity investments (including pass-through investments). These amendments are being made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review (Reinvention Initiative) and section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA), which requires OTS and other federal banking agencies to review, streamline, and modify regulations and policies to improve efficiency, reduce unnecessary costs, and remove inconsistent, outmoded and duplicative requirements.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Deborah Merkle, Project Manager, Supervision Policy, (202) 906–5688; Donna Deale, Manager, Supervision Policy, (202) 906–7488; Susan Miles, Senior Attorney, Regulations and Legislation Division, (202) 906–6798; Dean Shahinian, Senior Counsel for Corporate Activities, Business Transactions Division, (202) 906–7289; or Deborah Dakin, Deputy Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

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I. Background

Pursuant to section 303 of the CDRIA [1] and the Administration's Reinvention Initiative, OTS began a comprehensive review of its regulations in the spring of 1995. Early in that process, OTS identified its regulations governing operating subsidiaries, service corporations and other equity investments as one of the most important areas for updating and streamlining. Each regulation in this area was reviewed to determine whether it was current and understandable; imposed the least possible burden consistent with safety and soundness and statutory requirements; addressed subject matter more suited for handbook guidance; and was written in a clear, straightforward manner. OTS also sought industry input regarding staff's initial recommendations through an industry focus group consisting of thrift representatives, an industry trade association, and OTS staff. The consensus that emerged from this process was that regulatory burden could be reduced primarily by enhancing flexibility and clarifying investment options available to savings associations, including operating subsidiaries, service corporations, and pass-through investments.

As a result of this review, OTS identified a number of ways in which its regulations could be revised to reduce regulatory burden. On June 13, 1996, OTS issued a notice of proposed rulemaking.[2] The proposal reorganized some regulations into a chart to facilitate comparisons of the different types of subordinate organizations; replaced several application procedures with more streamlined notice requirements; standardized the requirements applicable to pass-through investments; revised the list of activities preapproved for thrift service corporations; removed regulations dealing with finance subsidiaries (which have largely been replaced by operating subsidiaries); and restated the regulations in plain language.

Today's final rule is substantially similar to the June proposal, but incorporates several changes and clarifications in response to comments received.

II. Summary of Comments and Description of the Final Rule

A. General Discussion of the Comments

The public comment period on the proposal closed on August 12, 1996. Ten commenters, including six federal savings associations, three trade associations, and one mortgage guaranty insurance corporation, submitted comments.

Eight of the ten commenters supported OTS efforts to clarify, consolidate, and reorganize these regulations. They agreed that the proposed regulatory changes will make it easier to make investments in subordinate organizations. Several commenters specifically supported the plain language drafting and accompanying chart, stating that these changes will be useful and will reduce the burden of compliance with the regulations. Most commenters who supported the proposal also made suggestions for clarifications and modifications, which are discussed in the section-by-section analysis. Two commenters, representing current or potential competitors of savings associations or their service corporations, urged OTS not to adopt, or to proceed more slowly with, changes that would expand the list of preapproved activities for service corporations of federal savings associations.

B. Section-by-Section Analysis

New Part 559–Subordinate Organizations

OTS proposed to adopt a new Part 559, Subsidiaries, that would include all of the agency's regulations affecting thrift subsidiaries. Commenters generally agreed with OTS's view that this reorganization will make it much easier for savings associations to find and use these regulations. OTS has retitled this part as ''Subordinate Organizations'' in order to avoid potential confusion arising from the use of the term ''subsidiary'' both as a generic term for a business organization in which a savings association has an ownership interest and as a more specific term used to describe a narrower category of companies in which the savings association's ownership interest is significant enough to give it direct or indirect control. A federal savings association's ownership interest in a service corporation may not be large enough to make that service corporation a ''subsidiary'' of the thrift, but the service corporation is still subject to federal regulation under this part because the savings association is an owner of the service corporation.

Section 559.1 What Does This Part Cover?

This section explains the scope of new Part 559 and sets forth OTS's basic statutory authority over subordinate organizations. No commenters addressed this section, which is adopted as proposed, with minor technical corrections.

Section 559.2 Definitions (new)

As OTS reviewed the comments received on the proposal, it became clear that adding a definitional section to Part 559 would help users to identify more readily what types of entities are affected by the various regulatory provisions. New § 559.2 gathers in one location definitions of key terms describing different types of entities in which savings associations may invest.

[1] 12 U.S.C. 4803(a)(1).

[2] 61 FR 29976 (June 13, 1996).

These definitions are derived in large part from existing regulatory definitions. The term ''subordinate organization'' encompasses all business organizations in which a savings association has a direct or indirect ownership interest except where that ownership interest has been acquired through the use of the savings association's pass-through investment authority (discussed below). ''Subsidiary'' is defined using language taken from the Federal Deposit Insurance Corporation's regulations governing notices filed for savings association subsidiaries, 12 CFR 303.13(a)(1996). This definition turns primarily on whether an association has control of the entity in which it invests. For these purposes, OTS will use its standard definition of ''control,'' which appears in its change-of-control regulations, 12 CFR Part 574. ''Operating subsidiary'' is defined as any entity that satisfies the operating subsidiary requirements of new § 559.3 and is designated as an operating subsidiary by the investing association. There are three basic characteristics of an operating subsidiary: (a) a majority of its voting shares must be owned by the investing association; (b) it must be controlled by the association; and (c) it may engage only in activities that are permissible for the association. ''Service corporation'' is defined as any entity that satisfies the service corporation requirements of new § 559.3 and the authorizing statute, 12 U.S.C. 1464(c)(4)(B), and is designated as a service corporation by the investing association. Service corporations may engage in activities reasonably related to the operation of a financial institution. However, the amount of funds a federal savings association may invest in service corporations is limited (as discussed below). ''Lower-tier entity,'' a new term, includes all business organizations in which an operating subsidiary, service corporation, or other subordinate organization has an ownership interest. It includes entities often commonly referred to as ''second-tier service corporations'' or ''service corporation subsidiaries.'' ''GAAP-consolidated subsidiary'' is a newly defined term that describes all operating subsidiaries and any service corporations or lower-tier entities that are consolidated with a savings association for purposes of filing reports in accordance with Generally Accepted Accounting Principles (GAAP).

Section 559.3 What Are the Characteristics of, and What Requirements Apply to, Subordinate Organizations of Federal Savings Associations?

Section 559.3 (proposed as § 559.2) authorizes federal savings associations to establish or acquire operating subsidiaries and service corporations. Most of this section takes the form of a chart that lists and compares the different characteristics of, and requirements that apply to, operating subsidiaries and service corporations (including lower-tier entities in which these companies invest). The chart is derived in large part from the current regulations at 12 CFR 545.74 (service corporations) and 545.81 (operating subsidiaries). Where appropriate, and for ease of reference, it cross-references other applicable OTS regulations that have been the subject of frequent questions to the agency. The chart reiterates that, in addition to preapproved service corporation activities, a federal thrift may continue to apply to OTS for case-by-case approval for a service corporation to engage in any activity that is reasonably related to the operation of a financial institution.

Commenters thought the chart would be a comprehensive and concise reference source that would make it easier to compare these two structures and determine which best fits the association's needs.

Commenters addressed several substantive areas covered by the chart:

Preemption

The regulation sets forth OTS's long-standing position that state law is preempted for operating subsidiaries to the same extent as it is for the parent federal savings association. OTS has taken this position because an operating subsidiary—which may only engage in activities permissible for its parent federal savings association and must be controlled by the investing savings association—is treated as the equivalent of a department of the parent thrift for regulatory and reporting purposes. In the past, OTS has not preempted state law for service corporations because service corporations are not so closely tied to the parent thrift.

One commenter asked that we reexamine whether state law should be preempted for those service corporations that must be incorporated in the state where the parent federal savings association is incorporated (commonly referred to as first-tier service corporations). Alternatively, this commenter urged that OTS consider relaxing or eliminating the requirement that first-tier service corporations (in contrast to operating subsidiaries and lower-tier entities) must be organized in the state where their parent thrift has its home office. The commenter argued that § 5(c)(4)(B) of the Home Owners' Loan Act (HOLA) only requires that a service corporation be incorporated in the federal savings association's home state where a service corporation is owned by more than one savings association.

Upon review, OTS continues to believe that state law should not be preempted for service corporations of federal savings associations to the same extent that it has been for federal savings associations and their operating subsidiaries. Service corporations engage in activities that are related to and promote, but go beyond, those permitted for federal savings associations themselves. In contrast, operating subsidiaries engage only in activities that could be conducted at the parent thrift level. Additionally, unlike an operating subsidiary, a service corporation need not be controlled by its parent thrift. Moreover, a federal thrift may only invest a small portion of its assets in service corporations, while no such limits apply to operating subsidiaries. These distinctions make service corporations less critical to the operations of federal savings associations. Therefore, to date OTS has concluded that broad federal preemption for service corporations is not necessary to facilitate the safe and sound operation of federal savings associations, to enable federal savings associations to conduct their operations in accordance with the best practices of thrift institutions in the United States, or to further other purposes of the HOLA. Although the agency could promulgate preemptive regulations if circumstances warranting federal preemption arise, the agency does not believe such circumstances exist at this time. Accordingly, service corporations continue to be subject to state law except where state law comes into direct conflict with federal law.

The home-state incorporation restriction that the commenter alternatively suggests that OTS relax or eliminate is a statutory requirement found at HOLA § 5(c)(4)(B). That section provides that federal savings associations may make investments ''in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the Federal savings association's home office is located, if such corporation's entire capital stock is available for purchase only by savings associations of such State and by Federal savings

associations having their home offices in such State.'' [3] The most natural reading of this language is that a service corporation must both: (a) be organized in the parent thrift's home state, and (b) sell capital stock only to thrifts that have their home offices in that state. This is how OTS and its predecessor have long read the statute. OTS does not have the authority to override the statute. Nevertheless, OTS would support a statutory change eliminating the home state incorporation requirement. In our view, this requirement is an unnecessary procedural hurdle with no connection to safety and soundness.

Inapplicability of HOLA Section 5(c) Investment Limits to Service Corporations

One trade association commenter representing competitors of federal savings associations reiterated a comment it had submitted on OTS's Lending and Investment proposal. It argued that OTS should aggregate commercial loans made by a federal thrift's service corporation with commercial loans made by the thrift itself for purposes of calculating investment limits under section 5(c)(2)(A). To do otherwise, it argues, would circumvent Congress' intent to establish a ceiling on commercial loan activity by savings associations.

The requirement that a service corporation's commercial loans be aggregated with those of the parent thrift to determine compliance with the limitation on commercial loans was previously established by OTS regulation, not the HOLA. This requirement was removed by the final Lending and Investments Rule, effective as of October 30, 1996.[4] As discussed in the preamble to that regulation, the statutory language imposing investment limits on commercial lending by savings associations nowhere refers to loans made by service corporations.[5] Similarly, section 5(c)(4)(B) of the HOLA, which authorizes investments in service corporations of up to 3% of a thrift's assets, does not contain any sublimit on commercial lending by service corporations.

Accordingly, as proposed, the chart that appears in § 559.3 reiterates that loans and investments made by service corporations are not subject to the limits that apply to federal savings associations under HOLA section 5(c).

Structure of Operating Subsidiaries and Service Corporations

One commenter specifically supported the provisions in the chart that streamline the procedure for converting service corporations to operating subsidiaries or operating subsidiaries to service corporations. We reiterate that a savings association converting its service corporation to an operating subsidiary must be certain that the activity is permissible for a federal savings association.

Two commenters also suggested that the chart should address whether an operating subsidiary may be structured as a limited partnership or limited liability company (LLC).[6] Both of these forms of organization limit the liability of their owners to the amount of their investment in much the same way as the liability of a stockholder of a corporation is limited. While OTS expects that the vast majority of operating subsidiaries will continue to be structured as corporations, in the interest of increasing federal thrifts' flexibility in structuring their operations, the agency has modified the chart by removing specific references to ''incorporation''. An operating subsidiary must still satisfy the basic requirements of majority ownership interest, limited liability, and effective operating control. Not all forms of organization will meet those requirements. OTS will therefore continue to address requests by thrifts to establish an operating subsidiary in a noncorporate form on a case-by-case basis through its § 559.11 notice and review process. Organizational forms that meet the requirements of the regulation and do not present safety and soundness concerns will be permitted.

The chart has been similarly amended to give service corporations the potential to be organized in other forms. EGRPRA amended the Bank Service Corporation Act to confirm that first-tier bank service corporations may be established as LLCs. HOLA was not similarly amended. Nothing in EGRPRA's legislative history or the legislative history of the HOLA addresses whether savings association service corporations may be organized as LLCs. Absent such guidance, OTS will follow its standard practice of interpreting the HOLA in a manner that does not elevate form over substance. Thus, OTS believes the HOLA authorization to invest in service corporations should be read to permit any organizational form that provides the same basic protections as the corporate form of organization, including limited liability. Any proposal to organize an LLC or a limited partnership as a first-tier service corporation will be carefully reviewed in the § 559.11 notice process to ascertain whether liability will in fact be limited and whether any other safety and soundness concerns are presented.

Consolidation of Operating Subsidiaries with Their Parent Savings Associations

One commenter urged OTS to amend the chart to allow for waiver of the requirement that operating subsidiaries are generally consolidated with their parent thrift for purposes of investment authority and other regulatory requirements. OTS does not believe that a specific waiver provision is necessary. OTS regulations already provide, at 12 CFR 500.30(a), that the OTS Director ''may, for good cause and to the extent permitted by statute, waive the applicability of any provision of this chapter.'' That provision covers all OTS regulations except for those containing statutorily mandated provisions. Because the operating subsidiary form of organization is permitted by, but not specifically addressed in OTS's statutory authority over federal savings associations, most requirements governing operating subsidiaries are not mandated by statute. OTS will review any requests to waive a consolidation requirement on a case-by-case basis to determine whether good cause exists.

OTS has also modified provisions of the chart summarizing the capital and Qualified Thrift Lender (QTL) requirements to reflect changes made to the underlying regulations in this or other recently adopted OTS regulations. Other technical, non-substantive changes have been made to make the chart easier to understand.

Section 559.4 What Activities Are Preapproved for Service Corporations?

This section (proposed as § 559.3) replaces the list of preapproved activities found in current § 545.74(c). This section does not purport to list all possible activities that may be permissible for service corporations of federal savings associations, but only

[3] 12 U.S.C. 1464(c)(4)(B) (emphasis added).

[4] 61 FR 50951 (September 30, 1996).

[5] We also note that on September 30, 1996, following publication of the January Lending and Investment proposal setting forth OTS's interpretation of HOLA section 5(c)(2)(A), the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA'') enhanced the commercial lending authority of federal thrifts under HOLA section 5(c)(2)(A), raising it by an additional 10% of assets for commercial loans made to small businesses. In amending this section, Congress did not in either statutory language or legislative history indicate disapproval of OTS's interpretation of this provision or the HOLA service corporation provision.

[6] LLCs are a relatively new form of business organization, that have certain advantages of both the corporate and partnership forms of ownership. They have become increasingly popular because the Internal Revenue Service has allowed LLCs meeting certain requirements to be taxed as partnerships.

those that have been preapproved and may be conducted by well-run institutions upon notice to OTS. Other unlisted activities that are reasonably related to the operation of financial institutions will be considered on a case-by-case basis upon application to OTS.

The proposal revised the list of preapproved activities to:

- Affirm that any activity a federal thrift may conduct directly, except deposit-taking, is preapproved for a service corporation, when conducted in the same manner as allowed at the federal savings association level. This includes all activities listed in the HOLA and Part 560, as well as other incidental powers addressed in OTS legal opinions and guidance.
- Include certain activities that the OTS already routinely approves on a case-by-case basis.
- Allow business and professional activities that involve financial documents, financial clients, or are generally finance-related to be performed for any person.
- Permit a limited number of services that have not been previously authorized, but are reasonably related to the operation of a financial institution and have been permitted for bank operating subsidiaries or bank service corporations.

Three commenters thought the proposed additions to the list of preapproved activities for service corporations would be helpful in a variety of ways: business plans could be developed more efficiently; uncertainty over whether activities are permissible would be eliminated; and, as a result, federal savings associations could function more efficiently.

One commenter requested that the agency clarify that the presence of an activity on the list of preapproved activities does not necessarily imply that federal savings associations cannot conduct the activity directly. This is correct, but it should also be noted that the activities listed in the regulation may be conducted without being subject to the same limits that apply to the parent federal savings association except where specifically provided. For example, service corporations may perform some services for third parties that the federal savings association may only perform for itself.

One trade association commenter representing competitors of savings associations argued that the proposed regulation would expand the activities permissible for service corporations too far. It only supported the modification of preapproved activities to include those previously authorized and permitted for bank operating subsidiaries or bank service corporations. This commenter also objected to permitting preapproved ''financial-related'' or ''credit-related'' activities to be performed for anyone (rather than only primarily for financial institutions), and characterized the proposal's changes as ''substantive modifications that go beyond regulatory burden reduction.''

OTS does not agree. The effect of today's amendments is *not* to expand the scope of permissible service corporation activities. The service corporation regulation has never purported to list all ''permissible'' activities of service corporations of federal savings associations, but only those ''preapproved.'' Under both the current and the new regulation, federal savings associations may apply to OTS for approval of any proposed service corporation activity that is ''reasonably related'' to the activities of federal savings associations and other financial institutions.[7] OTS believes that once it has become familiar with an activity and determined that it is ''reasonably related,'' the activity should be added to the preapproved list. No purpose is served by requiring well-run institutions to file applications (rather than notices) to engage in these activities, pay higher fees, and wait for agency approvals. Today's action merely reduces the procedural hurdles that service corporations of well-run federal savings associations must scale before engaging in certain permissible activities by replacing application requirements with notice requirements.

Of course, savings associations may continue to apply to OTS for case-by-case approval for their service corporations to engage in activities not on the preapproved list, or for the service corporation to provide services to a broader range of customers than those specified for some categories of activities on the preapproved list.

Today's additions to the preapproved list will place federal thrifts on a more level playing field with competitors (including non-depository financial institutions) by allowing thrift service corporations to engage in profitable businesses that do not carry significant risks and that may be synergistic with the core thrift business.

Mortgage Insurance

OTS requested comment on whether service corporations should be permitted to engage in activities related to private mortgage insurance (mortgage insurance). As part of its recent Conflicts of Interest, Corporate Opportunity, and Hazard Insurance rulemaking,[8] OTS has removed § 563.44 of its regulations, which had significantly limited the mortgage insurance activities of federal savings associations and their subordinate organizations, by, among other things, limiting the circumstances under which a savings association could insure any loan with a mortgage insurance company in which it had a significant direct or indirect interest.

One trade association commenter urged OTS not to make underwriting mortgage insurance a preapproved activity for service corporations and to proceed with caution in allowing service corporations to enter the mortgage insurance business. This commenter believed that mortgage insurance underwriting presents different risks than other insurance products because, among other reasons, it is non-cancelable, its premium is fixed for the duration of the policy, and it covers the riskiest type of single-family mortgage. If underwriting mortgage insurance is permitted, this commenter believed OTS should require an application, separate capitalization of the subsidiary, and arms' length transactions.

A second commenter urged OTS to make underwriting of captive mortgage reinsurance (''CMR'') (reinsurance solely of loans originated by an affiliated federal savings association and insured by a primary mortgage insurance provider) a preapproved activity. This commenter pointed out that the mortgage insurance industry is a highly regulated industry subject to comprehensive state and federal insurance regulatory requirements and oversight, as well as the ongoing scrutiny of the mortgage lending industry and secondary markets. The commenter specifically did not address the direct underwriting of mortgage insurance or general reinsurance of mortgage insurance.

Based on this commenter's description of CMR, it appears that CMR could be an activity ''reasonably related to the activities of financial institutions.'' At this point, however, OTS believes that the underwriting of captive mortgage reinsurance and other mortgage insurance-related activities should be considered on a case-by-case, rather than a preapproved, basis. This is consistent with the approach OTS has generally taken when authorizing new service corporation activities in order to

[7] See the introductory text to current 12 CFR 545.74(c)(1996). See also § 559.3(e)(2)(i) of today's final rule.

[8] 61 FR 60173 (November 27, 1996).

gain additional supervisory experience with a particular business over time before prescribing standards for preapproval. A savings association that is interested in conducting reinsurance activity through a service corporation may file an application with the agency describing how it would propose to conduct the activity and what safeguards it would put in place.

In addition to the activities listed as preapproved in the proposal, the final rule adds two activities that the Federal Reserve Board, on September 6, 1996, proposed to authorize for bank holding companies: (1) finance-related management consulting and management consulting for financial institution clients; and (2) printing and selling checks and related documents. If the Federal Reserve's rule is adopted in final form, these activities will automatically become authorized for bank service corporations by operation of 12 U.S.C. 1864(f).

In its proposal, OTS signalled its intent to review activities authorized for bank service corporations in making additions to the preapproved list. Although the two activities described above have not yet been adopted in final form by the Federal Reserve Board, they are clearly ''reasonably related'' to the business of financial institutions and, unlike the reinsurance activities described above, do not require significant capital or present other novel issues. Accordingly, the two activities have been added to the preapproved list.

Section 559.5 How Much May a Savings Association Invest in Service Corporations or Lower-Tier Entities?

Proposed § 559.4 (now § 559.5) replaced § 545.74(d), and reiterated that a federal savings association may invest in the aggregate 3% of its assets in one or more service corporations as long as the excess investment over 2% serves primarily community, inner city, or community development purposes. The proposal simplified the rules governing when a federal savings association may make loans to service corporations separate from the 3% of assets limit. Under the proposal, the only restrictions were that such additional loans: (1) be authorized elsewhere under the HOLA; (2) satisfy applicable percentage of assets limits (*e.g.*, 10–20% of assets for commercial loans); and (3) comply with the loans-to-one-borrower (LTOB) regulation.

Commenters generally agreed that the proposal would significantly condense and simplify the rules governing when a federal savings association may make loans to service corporations separate from the 3% of assets limit. Two commenters supported the proposed changes to these limits, believing that simplification would help institutions operate more efficiently. One thought the proposed changes would enhance growth opportunities without undermining the parent's safety and soundness and allow greater flexibility within multiple service corporation structures.

Two commenters, however, expressed concern with the requirement that loans by a thrift to its service corporations and lower-tier entities comply with the LTOB regulation. They argued that under the current regulation, some institutions are making loans in a safe and sound manner, not posing significant concentration risks, and are exceeding the thrift's LTOB limits. After reviewing the commenters' concerns, we agree that there are better ways to promote the goals of limiting and prudently diversifying the risks presented by savings associations' loans to subordinate organizations. In fashioning a final rule, we looked at not only the protections provided by LTOB, but also those afforded by the capital regulation and the HOLA section 5(c) investment limits.

The final rule continues to allow federal thrifts the flexibility to place loans to service corporations or lower-tier entities in either the HOLA section 5(c)(4)(B) investment category (service corporation investments), or another applicable HOLA investment category (*e.g.*, HOLA section 5(c)(2)(A)'s commercial lending authority), provided they have available capacity in the chosen category. Section 559.5 does not further limit the amount of such loans to a thrift's GAAP-consolidated subsidiaries (regardless of whether such GAAP-consolidated subsidiaries are service corporations or lower-tier entities). OTS believes that there is no need to impose separate limits on loans to GAAP-consolidated subsidiaries for several reasons. First, if the GAAP-consolidated subsidiary is engaged only in activities permissible for a national bank, its structure and risk are the equivalent of those of a traditional national bank operating subsidiary. Pursuant to 12 CFR 32.1(c), a national bank's loans to its operating subsidiaries are not subject to lending limits. Second, if the GAAP-consolidated subsidiary is engaged in activities that are not permissible for a national bank, the savings association must deduct its entire debt and equity investment in calculating its core capital under 12 CFR 567.5(a)(2)(iv), regardless of the authority under which such investments are made. As a result, even if the thrift were to lose its entire investment, there would be no adverse impact on its regulatory capital compliance. This provides assurance that such loans, if made, will not adversely affect the viability of a federal savings association. Therefore, we do not believe that any additional limitations under § 559.5 are necessary for GAAP-consolidated subsidiaries.

For subordinate organizations that are not GAAP-consolidated subsidiaries, § 559.5 has been revised from the proposal to impose a limit of 15% of the thrift's total capital on loans to any one subordinate organization. The regulation further imposes a 50% of total capital aggregate limit on loans to all subordinate organizations that are not GAAP-consolidated subsidiaries. By contrast, the proposed rule would have subjected all loans to a service corporation (even if GAAP-consolidated) and to its lower-tier entities to an aggregate 15% of capital limit.

To determine compliance with the ''15/50'' limits of the final rule, a thrift's loans to the subordinate organization must be aggregated with loans made by any GAAP-consolidated subsidiary to that subordinate organization. The Regional Director may modify the 15/50 limits on a case-by-case basis for safety and soundness reasons.

One commenter requested clarification that the additional loan authority is a separate authority from the HOLA section 5(c)(4)(B) investment authority, and not something that is limited to situations where that authority has been exhausted. This is correct.

A commenter requested that, where an entity may be considered either a service corporation or a pass-through entity under § 560.32 (discussed below), OTS clarify that the investment could be apportioned between the two authorities. OTS's longstanding position remains that investments that are authorized under two or more separate provisions of law may be made under either provision, or allocated between both provisions, to the extent that the savings association has remaining investment authority available under the applicable limits.

Subpart B—Regulations Applicable to All Savings Associations

Section 559.10 How Must Separate Corporate Identities be Maintained?

This section describes what a savings association and its subordinate organizations must do to establish and maintain separate identities. The purpose for these requirements, derived

from current §§ 545.81(f), 563.37, and 571.21, is to reduce the potential for customer confusion or for a court to hold the parent liable for the subordinate organization's conduct or obligations. Two commenters specifically supported this section. One of these commenters noted generally, however, that corporate separateness should not unnecessarily restrict the ability to advertise and cross-market products. OTS does not believe that the continuation of these long-standing requirements will in any way hamper the ability of a savings association and its subordinate organizations to advertise or cross-market each other's products. The section is being adopted as proposed.

Section 559.11 What Notices Are Required to Establish or Acquire a New Subsidiary or Engage in New Activities Through an Existing Subsidiary?

This section combines and streamlines the overlapping notice requirements currently contained in §§ 545.74(b)(2), 545.81(c), and 563.37(c). Two commenters expressly supported the streamlined notice and application procedures. This section is being adopted as proposed.

Section 559.12 How May a Subsidiary of a Savings Association Issue Securities?

OTS proposed this section to replace current § 563.132, requiring that a savings association notify OTS before a subsidiary issues securities. The proposed section also incorporated requirements from current § 545.82 (finance subsidiaries of federal savings associations) requiring that securities issued by all subsidiaries indicate that they are not covered by federal deposit insurance and may not be called or accelerated in the event of the savings association's insolvency.

One commenter requested clarification that § 559.12 does not apply to securities issuances to the parent or for a subsidiary's own corporate needs (as compared to issuing securities to a third party and forwarding the proceeds to the parent), arguing that such issuances were not covered by § 563.132 or § 545.82 and that applying the regulation to such issuances would increase regulatory burden. OTS has reexamined the scope of not only §§ 563.132 and 545.82, but also the notice requirements of new § 559.11, which requires savings associations to provide OTS with 30-days advance notice before conducting a new activity in a subsidiary. OTS has always considered the issuance of securities to be an activity covered by these provisions. Issuance of securities by a subsidiary, especially if the parent savings association expects to transfer any assets or make any guarantees in connection with the issuance, is a matter of which the regulator needs to be aware.

Upon review, however, OTS believes that its supervisory concerns can be satisfied by receiving initial notice that the subsidiary will be issuing securities. The more detailed reporting requirements of proposed § 559.12 have been replaced by a less burdensome recordkeeping requirement so that the examination process can thereafter monitor the actual securities issuances. Accordingly, a savings association must notify OTS under § 559.11 before it initially issues securities through a subsidiary, regardless of the purpose to which the proceeds will be put. Thereafter, no further notices are required, but savings associations and their subsidiaries should maintain records of their securities issuances under § 559.12 available for review by OTS examiners for as long as the securities are outstanding. Section 559.12 has been modified accordingly.

Section 559.13 How May a Savings Association Exercise its Salvage Power in Connection With its Service Corporation or Lower-Tier Entities?

This section replaces the application procedure for salvage investments of current § 563.38 with a 30-day notice requirement. In its notice, an institution must fully document its additional investment in a service corporation or a lower-tier entity in a manner that demonstrates how its action is consistent with safety and soundness and document other salvage alternatives considered. If the agency has concerns, it may take objection to, or grant conditional approval of, a notice to exercise such salvage power. One commenter expressly supported the change to a notice requirement.

This section is being adopted as proposed, with one modification. Language is being added to emphasize that investments made using salvage power authority are, as they have always been, considered investments for purposes of the capital regulation. Thus, for example, a salvage investment in a nonincludable subsidiary would be deducted in calculating the thrift's capital.

Amendments to Part 560—Lending and Investment

OTS also proposed to add certain provisions dealing with subordinate organizations and equity-related investments, such as service corporations, pass-through investments and *de minimis* investments to Part 560, Lending and Investments. These additions will make that part a comprehensive resource for users seeking information on federal savings associations' lending and investment authorities.

Section 560.30 General Lending and Investment Powers for Federal Savings Associations

In the interest of completeness, OTS proposed to add several equity-related investments to the lending and investment powers chart contained in this regulation. Investments in the following entities are being added as proposed: Small business investment corporations chartered pursuant to § 301(d) of the Small Business Act; open-end management investment companies; and service corporations. The chart has also been modified to reflect recent statutory amendments enhancing and clarifying federal savings associations' educational, credit card, and small business lending authority enacted as part of EGRPRA. Finally, the chart is being amended to clarify that liquidity investments are authorized under 12 U.S.C. 1464(c)(1)(M) as long as they are of a type that would qualify as liquid asset investments under 12 CFR part 566. The maturity limitations of that part generally do not affect this authorization. This carries forward language from former 12 CFR 545.71 that was inadvertently omitted from the final lending and investment rule when liquidity investments were added to the chart.

Section 560.32 Pass-Through Investments

This new section codifies federal savings associations' authority to invest in entities, such as limited partnerships and mutual funds, that hold only assets, and engage only in activities, permissible for federal savings associations. By clarifying the rules applicable to pass-through investments, this section enhances savings associations' access to this investment option. The section also establishes uniform safety and soundness constraints, ensuring that the OTS is aware of, and has the opportunity to object to, any move by a thrift to place significant amounts of its assets under the operating control of third parties.

A federal savings association's ability to make pass-through investments is derived from the same incidental authority pursuant to which it invests in operating subsidiaries. Pass-through entities differ from operating subsidiaries, however, in that a thrift

must have majority ownership of an operating subsidiary but may not control a pass-through entity. Unlike a service corporation, which is usually structured as a corporation and which may potentially engage in a broader range of activities than a federal savings association, pass-through investments (except for investments made primarily in order to use a corporation's services under § 560.32(b)(5)(v)) may take the form of stock investments only with special approval from OTS and may only be made in entities that engage in activities that a federal savings association could conduct directly.

Investments that satisfy the conditions enumerated in this section will not require advance notice to OTS. A savings association must provide written notice to OTS before making any pass-through investment that does not meet those standards. OTS will review these notices and may object or impose conditions for supervisory, legal, or safety and soundness reasons.

Loans that a savings association makes to an entity in which it has made a pass-through equity investment will be subject to the LTOB rule in the same manner as loans by a savings association to any third party. Absent particular safety and soundness concerns, such loans will not be aggregated with pass-through equity investments made pursuant to this section for purposes of either LTOB restrictions or restrictions under this section.

Commenters supported codifying pass-through investments because the requirements would be more clearly set forth and the approval process would be more predictable.

One commenter requested that OTS confirm that the restrictions applicable to pass-through investments do not apply to operating subsidiaries. A thrift's investment in its operating subsidiary is not subject to the restrictions set forth in this section. Pass-through investments made by an operating subsidiary would, however, be subject to this section.

Two commenters argued that LLCs should be a preapproved structure for pass-through investments. OTS agrees that LLCs should be a preapproved pass-through investment structure, as they offer a number of benefits to thrifts while containing adequate safeguards. Consistent with other preapproved entities, LLCs are generally structured to provide a thrift with limited liability equal to the amount invested. OTS believes that by preapproving this structure for potential pass-through investments, thrifts will enjoy greater flexibility and a lower regulatory burden, especially in the community development area.

Section 560.36 De minimis investments

This section (proposed as § 560.33) specifically confirms that a federal savings association may make *de minimis* equity investments in community organizations in which national banks may invest. Total investments made under this section may not exceed the greater of ¼ of 1% of an association's total capital or $100,000.

Two commenters argued that OTS should increase the permissible investment for well-capitalized, CAMEL 1- or 2-rated institutions to 5% of capital, in the aggregate, so long as deducting the investment from capital would not cause the institution to fall into a lower capital category and up to 10% of capital on application to OTS. This would parallel limits for national banks under 12 U.S.C. 24 (Eleventh) and 12 CFR part 24.

The HOLA does not contain a provision paralleling the authority of 12 U.S.C. 24 (Eleventh). However, OTS and its predecessor have long recognized that a federal savings association's incidental powers include the ability to make charitable contributions that assist its community. New § 560.36 allows thrifts to contribute to their communities by making equity investments in community organizations that do not exceed what they could otherwise generally directly contribute and deduct for tax purposes. Because this is a new regulation and federal thrifts have other community development investment options not available to national banks, OTS is not inclined to increase the *de minimis* limit at this time.

In this regard, we note that federal thrifts may, in addition to the *de minimis* authority set forth under this section, make community-related investments through their 3% of assets service corporation investment authority. The HOLA, in fact, requires that a thrift wishing to take full advantage of its authority to invest up to 3% of its assets in service corporations must dedicate at least 1% of those assets to investments promoting community, inner-city, or community development purposes. Additional investments may also be possible using an operating subsidiary, lower-tier entity, or pass-through investment. Accordingly, this section is adopted as proposed, with the limits proposed.

Amendments to Other Regulatory Sections

Section 545.74 Service Corporations

The bulk of this section has been incorporated into new part 559, Subordinate Organizations. The one exception is the safeguards that apply to securities brokerage activities of service corporations, which have been governed by 12 CFR 545.74(c)(4). OTS proposed to amend this paragraph to remove a prohibition against savings associations contracting with third parties for securities brokerage activities, but to otherwise leave it unchanged while the agency considered whether to incorporate this paragraph into part 559 or to modify the safeguards and apply them to all securities sales programs taking place on thrift premises by any entity, including service corporations, affiliates, and third party broker-dealers.

One commenter addressed this issue. The commenter supported the removal of the prohibition on federal savings associations contracting with third parties for securities brokerage activities, but argued that all of § 545.74(c)(4) duplicates existing regulations and interagency guidelines and should be removed. At this point, the agency has decided to deal with the broader issues of securities sales on association premises, including sales by service corporations, as part of a later rulemaking. This comment will be considered as part of that rulemaking. Accordingly, § 545.74(c)(4) is being amended and retained as § 545.74, ''Securities Brokerage,'' to better reflect its new scope.

Section 545.77 Real Estate for Offices and Related Facilities

This section was not addressed in the proposal. It sets forth federal savings associations' incidental authority to acquire real estate for their current and anticipated future office needs. The section is being recodified as new § 560.37 without substantive change.

Section 545.82 Finance Subsidiaries

The proposal proposed to remove this section and to deem all existing finance subsidiaries to be operating subsidiaries. All of the functions performed by finance subsidiaries may already be done with fewer restrictions by an operating subsidiary. The two commenters addressing this section supported the proposal. Accordingly, § 545.82 is being deleted.

Section 560.93 Lending Limitations

This section is being amended in connection with the amendments made today to new § 559.5. Under the current

section, a thrift's loans to its subsidiaries (defined as 5% or greater ownership) or affiliates are not subject to the LTOB limitations of this section. Loans by a thrift or any of its subsidiaries to a third party are aggregated, however, for purposes of this section. As amended, the section will generally not apply to loans made by a savings association to any of its subordinate organizations as the amount of such loans is governed by new § 559.5.[9] As presently, it will also not apply to loans made to an affiliate of the savings association, as the amount of those loans continues to be governed by § 563.41. Loans by a savings association or any of its subsidiaries (now defined as entities of which the savings association has direct or indirect control) to a third party are subject to this section.

Section 563.41 Loans and Other Transactions With Affiliates and Subsidiaries

OTS proposed to modify the definition of ''subsidiary'' in § 563.41 to mirror the statutory definition of section 23A of the Federal Reserve Act, 12 U.S.C. 371c, rather than the OTS capital regulation. The statutory definition turns on control, whereas the capital regulation was based on a 5% ownership interest. No commenters addressed this issue, but one commenter requested that OTS allow sister-bank treatment between a thrift subsidiary and sister thrift. Consistent with staff interpretations of the Federal Reserve, OTS has interpreted the sister-bank exemption to be available between a thrift subsidiary and sister thrift, provided the transaction would be covered by the sister-bank exemption if conducted by the parent thrift of the subsidiary.

The definition of ''subsidiary'' in § 563.41 is being modified as proposed.

Part 567—Capital

OTS proposed to simplify the calculation of investments in subsidiaries for capital purposes by changing the definition of ''subsidiary'' in § 567.1(dd) from 5% ownership to more than 50% ownership, paralleling the treatment of subsidiaries by the other federal banking agencies, and by removing language that defined investments in subsidiaries in a manner that has resulted in savings associations holding disproportionate amounts of capital against risks presented by investments made in some lower-tier entities. Two commenters supported these changes, stating that they would reduce regulatory burden. OTS is adopting these changes as proposed with one modification. Instead of referring to an ownership interest of 50% or greater, the regulation will refer to ownership interests that would be consolidated under GAAP. These are generally majority investments, so this change will not affect most savings associations. However, this modification will help to reduce confusion in the limited situations where GAAP, which is used as the basis for reporting under the Thrift Financial Report that savings associations file quarterly with OTS, uses a different standard than majority ownership.

III. Disposition of Existing Rules

Original provision	New provision	Comment
545.74(a)		Removed.
545.74(b) introductory text	560.30	Incorporated into lending and investment powers chart.
545.74(b)(1)	559.3(e)(2).	
545.74(b)(2)	559.11.	
545.74(b)(3)	559.3(e)(2)(ii).	
545.74(b)(4)	559.3(o)(2).	
545.74(b)(5)	559.1(a).	
545.74(c) introductory text	559.3(e)(2).	
545.74(c)(1)–(7) except for (c)(4)	559.4.	
545.74(c)(4)	545.74	Modified.
545.74(d)	559.5	Substantially revised.
545.74(e)	559.3(q)(2).	
545.76(a)	560.30.	
545.76(b)		Removed.
545.77	560.37.	
545.80	560.30.	
545.81(a)	559.3.	
545.81(b)	559.3(c)(1), (e)(1).	
545.81(c)(1), (2)	559.3(a)(1).	
545.81(c)(3)	559.11.	
545.81(d)	559.3(p).	
545.81(e)	559.3(h)(1).	
545.81(f)	559.10.	
545.81(g)	559.3(o)(1).	
545.81(h)	559.1(a).	
545.81(i)	559.1(b)	Modified.
545.81(j)	559.3(e)(1).	
545.81(k)	559.3(p).	
545.82		Removed.
560.93(a)		Modified.
563.37(a), (b)	559.10	Modified.
563.37(c)	559.11.	
563.38	559.13	Modified.
563.41(b)(4)		Modified.
563.132(a), (b)		Removed.
563.132(c)	559.12	Modified.

[9] Loans that a thrift makes to a third party that invests in the thrift's subordinate organization will be aggregated with any loans by the thrift to that subordinate organization in accordance with the combination rules that generally apply under the LTOB regulation.

Original provision	New provision	Comment
567.1(l)		Modified.
567.1(dd)		Modified.
571.21	559.10	Modified.

IV. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

V. Paperwork Reduction Act

The reporting requirements at 12 CFR 560.32 have been submitted to and approved by the Office of Management and Budget under OMB control number 1550–0078. The information is needed by the OTS to assist in regulating savings associations and their subsidiaries.

The final rule differs from the proposal in that 12 CFR 559.12 no longer contains the requirement to notify the OTS in writing following a securities issuance. The information that would have been contained in the notice is now a recordkeeping requirement. At the proposed rule stage, the burden attributed to § 559.12, approved under OMB control no. 1550–0013, remained unchanged. Since the change from the notice requirement to a recordkeeping requirement constitutes a reduction in burden, the information collection package under 1550–0013 has been submitted to OMB for review.

Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule will be displayed in the table at 12 CFR 506.1(b).

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant impact on a substantial number of small entities. The final rule streamlines requirements for all savings associations. It simplifies the requirements that apply when savings associations create, invest in, or conduct new activities through a variety of subordinate organizations or pass-through investments, and clarifies the statutorily required notices for such actions. The final rule will make it easier for small savings associations to locate the rules that apply to their investments.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule reduces regulatory burden. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VIII. Administrative Procedure Act and Effective Date

This final rule results from the notice of proposed rulemaking OTS published on June 13, 1996. In addition to the regulatory language proposed in that notice, OTS is today redesignating, without substantive change, other regulations located in Part 545 into new Part 559. The chart in Part 560 has also been updated to reflect changes in statutory provisions in EGRPRA on September 30, 1996. Pursuant to section 553(b) of the Administrative Procedure Act, OTS hereby finds that good cause exists not to publish those provisions for public notice and comment. These provisions are merely being renumbered and updated for the convenience of users, thus public notice and opportunity to comment are unnecessary.

Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d) permits an agency to waive the normal 30-day delay in effective date when a rule relieves a restriction. OTS finds good cause to make the rule effective in fewer than 30 days because the rule imposes no new regulatory burdens and relieves restrictions by streamlining application and notice requirements.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Conflicts of Interest, Corporate Opportunity, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 567

Capital, Savings associations.

12 CFR Part 571

Accounting, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, and for the reasons set forth in the preamble, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.74 is amended by:

a. Revising the section heading;

b. Removing paragraphs (a), (b), the paragraph heading and introductory text of paragraph (c), paragraphs (c)(1) through (c)(3), paragraph (c)(4)(ii)(F), paragraphs (c)(5) through (c)(7), and paragraphs (d) and (e);

c. Removing the paragraph heading of paragraph (c)(4);

d. Redesignating paragraphs (c)(4)(i) introductory text, (c)(4)(i)(A) through (c)(4)(i)(E), (c)(4)(ii) introductory text, (c)(4)(ii)(A) through (c)(4)(ii)(E), (c)(4)(ii)(G), (c)(4)(iii), and (c)(4)(iv) as paragraphs (a) introductory text, (a)(1) through (a)(5), (b) introductory text, (b)(1) through (b)(5), (b)(6), (c), and (d), respectively;

e. Revising the introductory text of newly designated paragraph (a);

f. Removing, in newly designated paragraph (b) introductory text, the phrase ''this paragraph (c)(4)(ii)'', and by adding in lieu thereof the phrase ''this paragraph (b)'';

g. Removing, in newly designated paragraph (b)(1), the phrase ''under paragraph (c)(3) of this section'', and by adding in lieu thereof the phrase ''§ 559.4 of this chapter''; and

h. Removing, in newly designated paragraph (c), the phrase ''paragraph (c)(4) of'', wherever it appears.

The revisions read as follows:

§ 545.74 Securities brokerage.

(a) A service corporation may execute securities transactions on an agency or riskless principal basis solely upon the order of and for the account of customers, and may provide standardized and individualized investment advice to individuals or entities, provided that the service corporation:

* * * * *

§§ 545.76, 545.77, 545.80–545.82 [Removed]

3. Sections 545.76, 545.77, 545.80, 545.81, and 545.82 are removed.

4. Part 559 is added to read as follows:

PART 559—SUBORDINATE ORGANIZATIONS

Sec.

559.1 What does this part cover?
559.2 Definitions.

Subpart A—Regulations Applicable to Federal Savings Associations

559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of federal savings associations?
559.4 What activities are preapproved for service corporations?
559.5 How much may a savings association invest in service corporations or lower-tier entities?

Subpart B—Regulations Applicable to All Savings Associations

559.10 How must separate corporate identities be maintained?
559.11 What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?
559.12 How may a subsidiary of a savings association issue securities?
559.13 How may a savings association exercise its salvage power in connection with its service corporation or lower-tier entities?

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

§ 559.1 What does this part cover?

(a) OTS is issuing this part 559 pursuant to its general rulemaking and supervisory authority under the Home Owners' Loan Act, 12 U.S.C. 1462 *et seq.*, and its specific authority under section 18(m) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(m). Subpart A of this part 559 applies to subordinate organizations of federal savings associations. Subpart B of this part applies to subordinate organizations of all savings associations. OTS may, at any time, limit a savings association's investment in any of these entities, or may limit or refuse to permit any activities of any of these entities for supervisory, legal, or safety and soundness reasons.

(b) Notices under this part are applications for purposes of statutory and regulatory references to ''applications.'' Any conditions that OTS imposes in approving any application are enforceable as a condition imposed in writing by the OTS in connection with the granting of a request by a savings association within the meaning of 12 U.S.C. 1818(b) or 1818(i).

§ 559.2 Definitions.

For purposes of this part:

Control has the same meaning as in part 574 of this chapter.

GAAP-consolidated subsidiary means an entity in which a savings association has a direct or indirect ownership interest and whose assets are consolidated with those of the savings association for purposes of reporting under Generally Accepted Accounting Principles (GAAP). Generally, these are entities in which a savings association has a majority ownership interest.

Lower-tier entity includes any company in which an operating subsidiary or a service corporation has a direct or indirect ownership interest.

Operating subsidiary means any entity that satisfies all of the requirements for an operating subsidiary set forth in § 559.3 of this part and that is designated by the parent savings association as an operating subsidiary pursuant to § 559.3 of this part. More than 50% of the voting shares of an operating subsidiary must be owned, directly or indirectly, by a federal savings association and no other person or entity may exercise effective operating control. An operating subsidiary may only engage in activities permissible for a federal savings association.

Ownership interest means any equity interest in a business organization, including stock, limited or general partnership interests, or shares in a limited liability company.

Service corporation means any entity that satisfies all of the requirements for service corporations in 12 U.S.C. 1464(c)(4)(B) and § 559.3 of this part and that is designated by the investing savings association as a service corporation pursuant to § 559.3 of this part. A service corporation must be organized under the laws of the state where the federal savings association's home office is located, may only be owned by savings associations with home offices in that state, and may engage in the activities identified in §§ 559.3(e)(2) and 559.4 of this part.

Subordinate organization means any corporation, partnership, business trust, association, joint venture, pool, syndicate, or other similar business organization in which a savings association has a direct or indirect ownership interest, unless that ownership interest qualifies as a pass-through investment pursuant to § 560.32 of this chapter and is so designated by the investing savings association.

Subsidiary means any subordinate organization directly or indirectly controlled by a savings association.

Subpart A—Regulations Applicable to Federal Savings Associations

§ 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of federal savings associations?

A federal savings association (''you'') that meets the requirements of this section, as detailed in the following chart, may establish, or obtain an interest in an operating subsidiary or a service corporation. For ease of reference, this section cross-references other regulations in this chapter affecting operating subsidiaries and service corporations. You should refer to those regulations for the details of how they apply. The chart also discusses the regulations that may apply to lower-tier entities in which you have an indirect ownership interest through your operating subsidiary or service corporation. The chart follows:

	Operating subsidiary	Service corporation
(a) How may a federal savings association (''you'') establish an operating subsidiary or a service corporation?	(1) You must file a notice satisfying § 559.11. Any finance subsidiary that existed on January 1, 1997 is deemed an operating subsidiary without further action on your part.	(2) You must file a notice satisfying § 559.11. Depending upon your condition and the activities in which the service corporation will engage, § 559.3(e)(2) may require you to file an application.
(b) Who may be an owner?	(1) Anyone may have an ownership interest in an operating subsidiary.	(2) Only savings associations with home offices in the state where you have your home office may have an ownership interest in any service corporation in which you invest.
(c) What ownership requirements apply?	(1) You must own, directly or indirectly, more than 50% of the voting shares of the operating subsidiary. No one else may exercise effective operating control.	(2) You are not required to have any particular percentage ownership interest and need not have control of the service corporation.
(d) What geographic restrictions apply?	(1) An operating subsidiary may be organized in any geographic location.	(2) A service corporation must be organized in the state where your home office is located.
(e) What activities are permissible?	(1) After you have notified OTS in accordance with § 559.11, an operating subsidiary may engage in any activity that you may conduct directly. You may hold another insured depository institution as an operating subsidiary.	(2)(i) If you are eligible for expedited treatment under § 516.3(a) of this chapter, and notify OTS as required by § 559.11, your service corporation may engage in the preapproved activities listed in § 559.4. You may request OTS approval for your service corporation to engage in any other activity reasonably related to the activities of financial institutions by filing an application in accordance with § 516.1 of this chapter. (ii) If you are subject to standard treatment under § 516.3(b) of this chapter, and notify OTS as required by § 559.11, your service corporation may engage in any activity that you may conduct directly except taking deposits. You may request OTS approval for your service corporation to engage in any other activity reasonably related to the activities of financial institutions, including the activities set forth in § 559.4(b)–(i), by filing an application in accordance with § 516.1 of this chapter.
(f) May the operating subsidiary or service corporation invest in lower-tier entities?	(1)(i) An operating subsidiary may itself hold an operating subsidiary. Part 559 applies equally to a lower-tier operating subsidiary. In applying the regulations in this part, the investing operating subsidiary should substitute ''investing operating subsidiary'' wherever the part uses ''you'' or ''savings association.''	(2) A service corporation may invest in all types of lower-tier entities as long as the lower-tier entity is engaged solely in activities that are permissible for a service corporation. All of the requirements of this part apply to such entities except for paragraphs (b)(2) and (d)(2) of this section.

	Operating subsidiary	Service corporation
	(ii) An operating subsidiary may also invest in other types of lower-tier entities. These entities must comply with all of the requirements of this part 559 that apply to service corporations except for paragraphs (b)(2) and (d)(2) of this section.	
(g) How much may a federal savings association invest?	(1) There are no limits on the amount you may invest in your operating subsidiaries, either separately or in the aggregate.	(2) Section 559.5 limits your aggregate investments in service corporations and indicates when your investments (both debt and equity) in lower-tier entities be aggregated with your investments in service corporations.
(h) Do federal statutes and regulations that apply to the savings association apply?	(1) Unless otherwise specifically provided by statute, regulation, or OTS policy, all federal statutes and regulations apply to operating subsidiaries in the same manner as they apply to you. You and your operating subsidiary are generally consolidated and treated as a unit for statutory and regulatory purposes.	(2) (i) If the federal statute or regulation specifically refers to ''service corporation,'' it applies to all service corporations, even if you do not control the service corporation or it is not a GAAP-consolidated subsidiary. (ii) If the federal statute or regulation refers to ''subsidiary,'' it applies only to service corporations that you directly or indirectly control.
(i) Do the investment limits that apply to federal savings associations (HOLA section 5(c) and part 560 of this chapter) apply?	(1) Your assets and those of your operating subsidiary are aggregated when calculating investment limitations.	(2) Your service corporation's assets are not subject to the same investment limitations that apply to you. The investment activities of your service corporation are governed by paragraph (e)(2) of this section and § 559.4.
(j) How does the capital regulation (part 567 of this chapter) apply?	(1) Your assets and those of your operating subsidiary are consolidated for all capital purposes.	(2) The capital treatment of a service corporation depends upon whether it is an includable subsidiary. That determination is based upon factors set forth in part 567 of this chapter, including your percentage ownership of the service corporation and the activities in which the service corporation engages. Both debt and equity investments in service corporations that are GAAP-consolidated subsidiaries are considered investments in subsidiaries for purposes of the capital regulation, regardless of the authority under which they are made.
(k) How does the loans-to-one-borrower (LTOB) regulation (§ 560.93 of this chapter) apply?	(1) The LTOB regulation does not apply to loans from you to your operating subsidiary or loans from your operating subsidiary to you. Other loans made by your operating subsidiary are aggregated with your loans for LTOB purposes.	(2) The LTOB regulation does not apply to loans from you to your service corporation or from your service corporation to you. However, § 559.5 imposes restrictions on the amount of loans you may make to certain service corporations. Loans made by a service corporation that you control to entities other than you or your subordinate organizations are aggregated with your loans for LTOB purposes.

	Operating subsidiary	Service corporation
(l) How do the transactions with affiliates (TWA) regulations (§§ 563.41 and 563.42 of this chapter) apply?	(1) Section 563.41 of this chapter explains how TWA applies. Generally, an operating subsidiary of a savings association is not deemed to be an affiliate unless it is a depository institution or the parent holding company or another affiliate has control of the subsidiary outside of the ownership chain that runs through the thrift. Transactions that an operating subsidiary engages in with an affiliate of the thrift are aggregated with those of the thrift.	(2) Section 563.41 of this chapter explains how TWA applies. Generally, a service corporation that is controlled by a savings association is not deemed to be an affiliate of that savings association unless it is a depository institution or the parent holding company or another affiliate has control of the service corporation outside of the ownership chain that runs through the thrift. Transactions that a service corporation that is directly or indirectly controlled by the savings association engages in with an affiliate of the savings association are aggregated with those of the savings association.
(m) How does the Qualified Thrift Lender (QTL) (12 U.S.C. 1467a(m)) test apply?	(1) Under 12 U.S.C. 1467a(m)(5), you may determine whether to consolidate the assets of a particular operating subsidiary for purposes of calculating your qualified thrift investments. If the operating subsidiary's assets are not consolidated with yours for that purpose, your investment in the operating subsidiary will be considered in calculating your qualified thrift investments.	(2) Under 12 U.S.C. 1467a(m)(5), you may determine whether to consolidate the assets of a particular service corporation for purposes of calculating your qualified thrift investments. If a service corporation's assets are not consolidated with yours for that purpose, your investment in the service corporation will be considered in calculating your qualified thrift investments.
(n) Does state law apply?	(1) State law applies to operating subsidiaries only to the extent it applies to you.	(2) State law applies to service corporations regardless of whether it applies to you, except where there is a conflict with federal law.
(o) May OTS conduct examinations?	(1) An operating subsidiary is subject to examination by OTS.	(2) Before you invest in a service corporation, you must obtain its written agreement to permit and to pay the cost of such examinations as OTS deems necessary.
(p) What must be done to redesignate an operating subsidiary as a service corporation or a service corporation as an operating subsidiary?	(1) Before redesignating an operating subsidiary as a service corporation, you should consult with the OTS Regional Director for the Region in which your home office is located. You must maintain adequate internal records, available for examination by OTS, demonstrating that the redesignated service corporation meets all of the applicable requirements of this part and that your board of directors has approved the redesignation.	(2) Before redesignating a service corporation as an operating subsidiary, you should consult with the OTS Regional Director for the Region in which your home office is located. You must maintain adequate internal records, available for examination by OTS, demonstrating that the redesignated operating subsidiary meets all of the applicable requirements of this part and that your board of directors has approved the redesignation.

	Operating subsidiary	Service corporation
(q) What are the consequences of failing to comply with the requirements of this part?	(1) If an operating subsidiary, or any lower-tier entity in which the operating subsidiary invests pursuant to paragraph (f)(1) of this section fails to meet any of the requirements of this section, you must notify OTS. Unless otherwise advised by OTS, if the company cannot comply within 90 days with all of the requirements for either an operating subsidiary or a service corporation under this section, or any other investment authorized by 12 U.S.C. 1464(c) or part 560 of this chapter, you must promptly dispose of your investment.	(2) If a service corporation, or any lower-tier entity in which the service corporation invests pursuant to paragraph (f)(2) of this section, fails to meet any of the requirements of this section, you must notify OTS. Unless otherwise advised by OTS, if the company cannot comply within 90 days with all of the requirements for either an operating subsidiary or a service corporation under this section, or any other investment authorized by 12 U.S.C. 1464(c) or part 560 of this chapter, you must promptly dispose of your investment.

§ 559.4 What activities are preapproved for service corporations?

This section sets forth the activities that have been preapproved for service corporations. Section 559.3(e)(2) of this part sets forth the procedures that govern engaging in a broader scope of activities on a case-by-case basis. You should read these two sections together to determine whether you must file a notice with OTS under § 559.11 of this part, or whether you must file an application under § 516.1 of this chapter and receive prior written OTS approval in order for your service corporation to engage in a particular activity. To the extent permitted by § 559.3(e)(2) of this part, a service corporation may engage in the following activities:

(a) Any activity that all federal savings associations may conduct directly, except taking deposits.

(b) Business and professional services. The following services are preapproved for service corporations only when they are limited to financial documents or financial clients or are generally finance-related:

(1) Accounting or internal audit;

(2) Advertising, marketing research and other marketing;

(3) Clerical;

(4) Consulting;

(5) Courier;

(6) Data processing;

(7) Data storage facilities operation and related services;

(8) Office supplies, furniture, and equipment purchasing and distribution;

(9) Personnel benefit program development or administration;

(10) Printing and selling forms that require Magnetic Ink Character Recognition (MICR) encoding;

(11) Relocation of personnel;

(12) Research studies and surveys;

(13) Software development and systems integration; and

(14) Remote service unit operation, leasing, ownership or establishment.

(c) Credit-related activities.

(1) Abstracting;

(2) Acquiring and leasing personal property;

(3) Appraising;

(4) Collection agency;

(5) Credit analysis;

(6) Check or credit card guaranty and verification;

(7) Escrow agent or trustee (under deeds of trust, including executing and deliverance of conveyances, reconveyances and transfers of title); and

(8) Loan inspection.

(d) Consumer services.

(1) Financial advice or consulting;

(2) Foreign currency exchange;

(3) Home ownership counseling;

(4) Income tax return preparation;

(5) Postal services;

(6) Stored value instrument sales;

(7) Welfare benefit distribution;

(8) Check printing and related services; and

(9) Remote service unit operation, leasing, ownership, or establishment.

(e) Real estate related services.

(1) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites, in accordance with a prudent program of property development;

(2) Acquiring improved real estate or manufactured homes to be held for rental or resale, for remodeling, renovating, or demolishing and rebuilding for sale or rental, or to be used for offices and related facilities of a stockholder of the service corporation;

(3) Maintaining and managing real estate; and

(4) Real estate brokerage for property owned by a savings association that owns capital stock of the service corporation, the service corporation, or a lower-tier entity in which the service corporation invests.

(f) Securities brokerage, insurance and related services.

(1) Execution of transactions in securities or other nondeposit investment products on an agency or riskless principal basis solely upon the order of and for the account of customers, provided that the service corporation complies with the provisions of § 545.74 of this chapter;

(2) Investment advice, provided that the service corporation complies with the provisions of § 545.74 of this chapter;

(3) Insurance brokerage or agency for liability, casualty, automobile, life, health, accident or title insurance;

(4) Liquidity management;

(5) Issuing notes, bonds, debentures or other obligations or securities; and

(6) Purchase or sale of coins issued by the U.S. Treasury.

(g) Investments.

(1) Tax-exempt bonds used to finance residential real property for family units;

(2) Tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(3) Small business investment companies licensed by the U.S. Small Business Administration to invest in small businesses engaged exclusively in the activities listed in paragraphs (a) through (i) of this section; and

(4) Investing in savings accounts of an investing thrift.

(h) Community development and charitable activities:

(1) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character;

(2) Investments that meet the community development needs of, and

primarily benefit, low- and moderate-income communities;

(3) Investments in low-income housing tax credit projects and entities authorized by statute (*e.g.*, community development financial institutions) to promote community, inner city, and community development purposes; and

(4) Establishing a corporation that is recognized by the Internal Revenue Service as organized for charitable purposes under 26 U.S.C. 501(c)(3) of the Internal Revenue Code and making a reasonable contribution to capitalize it, *provided* that the corporation engages exclusively in activities designed to promote the well-being of communities in which the owners of the service corporation operate.

(i) Activities reasonably incident to those listed in paragraphs (a) through (h) of this section if the service corporation engages in those activities.

§ 559.5 How much may a savings association invest in service corporations or lower-tier entities?

The amount that a federal savings association (''you'') may invest in a service corporation or any lower-tier entity depends upon several factors. These include your total assets, your capital, the purpose of the investment, and your ownership interest in the service corporation or entity.

(a) Under section 5(c)(4)(B) of the HOLA, you may invest up to 3% of your assets in the capital stock, obligations, and other securities of service corporations. Any investment you make under this paragraph that would cause your investment, in the aggregate, to exceed 2% of your assets must serve primarily community, inner city, or community development purposes. You must designate the investments serving those purposes, which include:

(1) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character;

(2) Investments for the preservation or revitalization of either urban or rural communities;

(3) Investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or

(4) Other community, inner city, or community development-related investments approved by OTS.

(b) In addition to the amounts you may invest under paragraph (a) of this section, and to the extent that you have authority under other provisions of section 5(c) of the HOLA and part 560 of this chapter, and available capacity within any applicable investment limits, you may make loans to any service corporation and any lower-tier entity, subject to the following conditions:

(1) You and your GAAP-consolidated subsidiaries may, in the aggregate, make loans of up to 15% of your capital as defined in § 567.5(c) of this chapter to each subordinate organization that does not qualify as a GAAP-consolidated subsidiary. All loans made under this paragraph (b)(1) may not, in the aggregate, exceed 50% of your total capital, as defined in § 567.5(c) of this chapter.

(2) The Regional Director may limit the amount of loans to a GAAP-consolidated subsidiary, or may adjust the limits set forth in paragraph (b)(1) of this section where safety and soundness considerations warrant such action.

(c) For purposes of this section, the terms ''loans'' and ''obligations'' include all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

Subpart B—Regulations Applicable to All Savings Associations

§ 559.10 How must separate corporate identities be maintained?

(a) Each savings association and subordinate organization thereof must be operated in a manner that demonstrates to the public that each maintains a separate corporate existence. Each must operate so that:

(1) Their respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of their separate corporate procedures;

(3) Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise; and

(5) Unless the parent savings association has guaranteed a loan to the subordinate organization, all borrowings by the subordinate organization indicate that the parent is not liable.

(b) OTS regulations that apply both to savings associations and subordinate organizations shall not be construed as requiring a savings association and its subordinate organizations to operate as a single entity.

§ 559.11 What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?

When required by section 18(m) of the Federal Deposit Insurance Act, a savings association (''you'') must file a notice (''Notice'') in accordance with § 516.1(c) of this chapter at least 30 days before establishing or acquiring a subsidiary or engaging in new activities in a subsidiary. The Notice must contain all of the information the Federal Deposit Insurance Corporation (FDIC) requires pursuant to 12 CFR 303.13. Providing OTS with a copy of the notice you file with the FDIC will satisfy this requirement. If OTS notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive OTS's prior written approval in accordance with § 516.1(c) of this chapter before establishing or acquiring the subsidiary or engaging in new activities in the subsidiary.

§ 559.12 How may a subsidiary of a savings association issue securities?

(a) A subsidiary may issue, either directly or through a third party intermediary, any securities that its parent savings association (''you'') may issue. The subsidiary must not state or imply that the securities it issues are covered by federal deposit insurance. A subsidiary may not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that you are insolvent or have been placed into receivership.

(b) You must file a notice with OTS in accordance with § 559.11 of this part at least 30 days before your first issuance of any securities through an existing subsidiary or in conjunction with establishing or acquiring a new subsidiary. If OTS notifies you within 30 days that the notice presents supervisory concerns or raises significant issues of law or policy, you must receive OTS's prior written approval before issuing securities through your subsidiary.

(c) For as long as any securities are outstanding, you must maintain all records generated through each securities issuance in the ordinary course of business, including a copy of any prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by OTS. Such records must include, but are not limited to:

(1) The amount of your assets or liabilities (including any guarantees you make with respect to the securities issuance) that have been transferred or made available to the subsidiary; the percentage that such amount represents of the current book value of your assets on an unconsolidated basis; and the current book value of all such assets of the subsidiary;

(2) The terms of any guarantee(s) issued by you or any third party;

(3) A description of the securities the subsidiary issued;

(4) The net proceeds from the issuance of securities (or the pro rata portion of the net proceeds from securities issued through a jointly owned subsidiary); the gross proceeds of the securities issuance; and the market value of assets collateralizing the securities issuance (any assets of the subsidiary, including any guarantees of its securities issuance you have made);

(5) The interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(6) The minimum denomination of the subsidiary's securities; and

(7) Where the subsidiary marketed or intends to market the securities.

(d) Sales of the subsidiary's securities to retail customers must comply with § 545.74 of this chapter.

§ 559.13 How may a savings association exercise its salvage power in connection with a service corporation or lower-tier entities?

(a) In accordance with this section, a savings association (''you'') may exercise your salvage power to make a contribution or a loan (including a guarantee of a loan made by any other person) to your service corporation or lower-tier entity (''salvage investment'') that exceeds the maximum amount otherwise permitted under law or regulation. You must notify OTS at least 30 days before making such a salvage investment. This notice must demonstrate that:

(1) The salvage investment protects your interest in the service corporation or lower-tier entity;

(2) The salvage investment is consistent with safety and soundness; and

(3) You considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (a)(1) and (a)(2) of this section.

(b) If OTS notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive OTS's prior written approval in accordance with § 516.1(c) of this chapter before making a salvage investment.

(c) If your service corporation or lower-tier entity is a GAAP-consolidated subsidiary, your salvage investment under this section will be considered an investment in a subsidiary for purposes of part 567 of this chapter.

PART 560—LENDING AND INVESTMENT

5. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

6. Section 560.30 is revised to read as follows:

§ 560.30 General lending and investment powers of federal savings associations.

Pursuant to section 5(c) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(c), a federal savings association may make, invest in, purchase, sell, participate in, or otherwise deal in (including brokerage or warehousing) all loans and investments allowed under section 5(c) of the HOLA including, without limitation, the following loans, extensions of credit, and investments, subject to the limitations indicated and any such terms, conditions, or limitations as may be prescribed from time to time by the OTS by policy directive, order, or regulation:

LENDING AND INVESTMENT POWERS CHART

Category	HOLA authorization	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
Bankers' bank stock	5(c)(4)(E)	Same terms as applicable to national banks.
Business development credit corporations	5(c)(4)(A)	The lesser of .5% of total outstanding loans or $250,000.
Commercial loans	5(c)(2)(A)	20% of total assets, provided that amounts in excess of 10% of total assets may be used only for small business loans.
Commercial paper and corporate debt securities.	5(c)(2)(D)	Up to 35% of total assets.[1, 2]
Community development loans and equity investments.	5(c)(3)(B)	5% of total assets, provided equity investments do not exceed 2% of total assets.[3]
Construction loans without security	5(c)(3)(D)	In the aggregate, the greater of total capital or 5% of total assets.
Consumer loans	5(c)(2)(D)	Up to 35% of total assets.[1, 4].
Credit card loans or loans made through credit card accounts.	(5)(c)(1)(T)	None.[5].
Deposits in insured depository institutions	5(c)(1)(G)	None.[5]
Education loans	5(c)(1)(U)	None.[5]
Federal government and government-sponsored enterprise securities and instruments.	5(c)(1)(C), 5(c)(1)(D), 5(c)(1)(E), 5(c)(1)(F)	None.[5]
Finance leasing	5(c)(1)(B), 5(c)(2)(A), 5(c)(2)(B), 5(c)(2)(D)	Based on purpose and property financed.[6]
Foreign assistance investments	5(c)(4)(C)	1% of total assets.[7]
General leasing	5(c)(2)(C)	10% of assets.[6]
Home improvement loans	5(c)(1)(J)	None.[5]
Home (residential) loans[8]	5(c)(1)(B)	None.[5, 9]
HUD-insured or guaranteed investments	5(c)(1)(O)	None.[5]
Insured loans	5(c)(1)(I), 5(c)(1)(K)	None.[5]
Liquidity investments	5(c)(1)(M)	None.[5, 10]
Loans secured by deposit accounts	5(c)(1)(A)	None.[5, 11]
Loans to financial institutions, brokers, and dealers.	5(c)(1)(L)	None.[5, 12]
Manufactured home loans	5(c)(1)(J)	None.[5, 13]
Mortgage-backed securities	5(c)(1)(R)	None.[5]
National Housing Partnership Corporation and related partnerships and joint ventures.	5(c)(1)(N)	None.[5]
Nonconforming loans	5(c)(3)(C)	5% of total assets.

LENDING AND INVESTMENT POWERS CHART—Continued

Category	HOLA authorization	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
Nonresidential real property loans	5(c)(2)(B)	400% of total capital.[14]
Open-end management investment companies[15].	5(c)(1)(Q)	None.[5]
Service corporations	5(c)(4)(B)	3% of total assets, as long as any amounts in excess of 2% of total assets further community, inner city, or community development purposes.[16]
Small business investment companies[17]	5(c)(4)(D)	1% of total assets.
Small-business-related securities	5(c)(1)(S)	None.[5]
State and local government obligations	5(c)(1)(H)	None.[5, 18]
State housing corporations	5(c)(1)(P)	None.[5, 19]
Transaction account loans, including overdrafts	5(c)(1)(A)	None.[5, 20]

Notes:

[1] For purposes of determining a Federal savings association's percentage of assets limitation, investment in commercial paper and corporate debt securities must be aggregated with the Federal savings association's investment in consumer loans.

[2] A Federal savings association may invest in commercial paper and corporate debt securities, which includes corporate debt securities convertible into stock, subject to the provisions of § 560.40. Amounts in excess of 30% of assets, in the aggregate, may be invested only in obligations purchased by the association directly from the original obligor and for which no finder's or referral fees have been paid.

[3] The 2% of assets limitation is a sublimit for investments within the overall 5% of assets limitation on community development loans and investments. The qualitative standards for such loans and investments are set forth in HOLA section 5(c)(3)(B), as explained in an opinion of the OTS Chief Counsel dated May 10, 1995 (available upon request at the address set forth in § 516.1(a) of this chapter).

[4] Amounts in excess of 30% of assets, in aggregate, may be invested only in loans made by the association directly to the original obligor and for which no finder's or referral fees have been paid. A Federal savings association may include loans to dealers in consumer goods to finance inventory and floor planning in the total investment made under this section.

[5] While there is no statutory limit on certain categories of loans and investments, including credit card loans, home improvement loans, education loans, and deposit account loans, OTS may establish an individual limit on such loans or investments if the association's concentration in such loans or investments presents a safety and soundness concern.

[6] A Federal savings association may engage in leasing activities subject to the provisions of § 560.41.

[7] This 1% of assets limitation applies to the aggregate outstanding investments made under the Foreign Assistance Act and in the capital of the Inter-American Savings and Loan Bank. Such investments may be made subject to the provisions of § 560.43.

[8] A home (or residential) loan includes loans secured by one-to-four family dwellings, multi-family residential property and loans secured by a unit or units of a condominium or housing cooperative.

[9] A Federal savings association may make home loans subject to the provisions of §§ 560.33, 560.34 and 560.35.

[10] The assets qualifying as liquidity investments are described in § 566.1(g) of this chapter. The maturity limitations (except those for bankers acceptances) of § 566.1(g) of this chapter do not apply for purposes of this section.

[11] Loans secured by savings accounts and other time deposits may be made without limitation, provided the Federal savings association obtains a lien on, or a pledge of, such accounts. Such loans may not exceed the withdrawable amount of the account.

[12] A Federal savings association may only invest in these loans if they are secured by obligations of, or by obligations fully guaranteed as to principal and interest by, the United States or any of its agencies or instrumentalities, the borrower is a financial institution insured by the Federal Deposit Insurance Corporation or is a broker or dealer registered with the Securities and Exchange Commission, and the market value of the securities for each loan at least equals the amount of the loan at the time it is made.

[13] If the wheels and axles of the manufactured home have been removed and it is permanently affixed to a foundation, a loan secured by a combination of a manufactured home and developed residential lot on which it sits may be treated as a home loan.

[14] Without regard to any limitations of this part, a Federal savings association may make or invest in the fully insured or guaranteed portion of nonresidential real estate loans insured or guaranteed by the Economic Development Administration, the Farmers Home Administration, or the Small Business Administration. Unguaranteed portions of guaranteed loans must be aggregated with uninsured loans when determining an association's compliance with the 400% of capital limitation for other real estate loans.

[15] This authority is limited to investments in open-end management investment companies that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940. The portfolio of the investment company must be restricted by the company's investment policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in. Separate and apart from this authority, a Federal savings association may make pass-through investments to the extent authorized by § 560.32.

[16] A Federal savings association may invest in service corporations subject to the provisions of part 559 of this chapter.

[17] A Federal savings association may only invest in small business investment companies formed pursuant to section 301(d) of the Small Business Investment Act of 1958.

[18] This category includes obligations issued by any state, territory, or possession of the United States or political subdivision thereof (including any agency, corporation, or instrumentality of a state or political subdivision), subject to § 560.42.

[19] A Federal savings association may invest in state housing corporations subject to the provisions of § 560.121.

[20] Payments on accounts in excess of the account balance (overdrafts) on commercial deposit or transaction accounts shall be considered commercial loans for purposes of determining the association's percentage of assets limitation.

7. Sections 560.32, 560.36, and 560.37 are added to read as follows:

§ 560.32 Pass-through investments.

(a) A federal savings association (''you'') may make pass-through investments. A pass-through investment occurs when you invest in an entity (''company'') that engages only in activities that you may conduct directly and the investment meets the requirements of this section. If an investment is authorized under both this section and some other provision of law, you may designate under which authority or authorities the investment is made. When making a pass-through investment, you must comply with all the statutes and regulations that would apply if you were engaging in the activity directly. For example, your proportionate share of the company's assets will be aggregated with the assets you hold directly in calculating investment limits (*e.g.*, no more than 400% of total capital may be invested in nonresidential real property loans).

(b) You may make a pass-through investment without prior notice to OTS if all of the following conditions are met:

(1) You do not invest more than 15% of your total capital in one company;

(2) The book value of your aggregate pass-through investments does not

exceed 50% of your total capital after making the investment;

(3) Your investment would not give you direct or indirect control of the company;

(4) Your liability is limited to the amount of your investment; and

(5) The company falls into one of the following categories:

(i) A limited partnership;

(ii) An open-end mutual fund;

(iii) A closed-end investment trust;

(iv) A limited liability company; or

(v) An entity in which you are investing primarily to use the company's services (*e.g.*, data processing).

(c) If you want to make other pass-through investments, you must provide OTS with 30 days' advance notice. If within that 30-day period OTS notifies you that an investment presents supervisory, legal, or safety and soundness concerns, you must file an application with OTS in accordance with § 516.1 of this chapter and may not make the investment without first receiving OTS's prior written approval. Notices under this section are deemed to be applications for purposes of statutory and regulatory references to ''applications.'' Any conditions that OTS imposes on any pass-through investment shall be enforceable as a condition imposed in writing by the OTS in connection with the granting of a request by a savings association within the meaning of 12 U.S.C. 1818(b) or 1818(i).

§ 560.36 De minimis investments.

A federal savings association may invest in the aggregate up to the greater of one-fourth of 1% of its total capital or $100,000 in community development investments of the type permitted for a national bank under 12 CFR Part 24.

§ 560.37 Real estate for office and related facilities.

A federal savings association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the federal savings association's present needs or its reasonable future needs for office and related facilities. A federal savings association may not make an investment that would cause the outstanding book value of all such investments (including investments under § 559.4(e)(2) of this chapter) to exceed its total capital.

8. Section 560.93 is amended by revising paragraph (a) to read as follows:

§ 560.93 Lending limitations.

(a) *Scope.* This section applies to all loans and extensions of credit to third parties made by a savings association and its subsidiaries. This section does not apply to loans made by a savings association or a GAAP-consolidated subsidiary to subordinate organizations or affiliates of the savings association. The terms *subsidiary, GAAP-consolidated subsidiary,* and *subordinate organization* have the same meanings as specified in § 559.2 of this chapter. The term *affiliate* has the same meaning as specified in § 563.41 of this chapter.

* * * * *

PART 563—OPERATIONS

9. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

§§ 563.37, 563.38, 563.132 [Removed]

10. Sections 563.37, 563.38, and 563.132 are removed.

11. Section 563.41 is amended by revising paragraph (b)(4) to read as follows:

§ 563.41 Loans and other transactions with affiliates and subsidiaries.

* * * * *

(b) * * *

(4) The term *subsidiary,* when used in connection with a savings association means a company that is controlled by that savings association within the meaning of part 574 of this chapter;

* * * * *

PART 567—CAPITAL

12. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

13. Section 567.1 is amended by removing in paragraph (l)(1) the phrase ''(either directly or through ownership of a subsidiary)'', and by revising paragraph (dd) to read as follows:

§ 567.1 Definitions.

* * * * *

(dd) *Subsidiary.* The term *subsidiary* means any corporation, partnership, business trust, joint venture, association or similar organization in which a savings association directly or indirectly holds an ownership interest and the assets of which are consolidated with those of the savings association for purposes of reporting under Generally Accepted Accounting Principles (GAAP). Generally, these are majority-owned subsidiaries.[1] This definition does not include ownership interests that were taken in satisfaction of debts previously contracted, provided that the reporting association has not held the interest for more than five years or a longer period approved by the OTS.

* * * * *

PART 571—STATEMENTS OF POLICY

14. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.21 [Removed]

15. Section 571.21 is removed.

Dated: December 6, 1996.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 96–31639 Filed 12–17–96; 8:45 am]

BILLING CODE 6720–01–P

[1] The OTS reserves the right to review a savings association's investment in a subsidiary on a case-by-case basis. If the OTS determines that such investment is more appropriately treated as an equity security or an ownership interest in a subsidiary, it will make such determination regardless of the percentage of ownership held by the savings association.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–29]

Revocation of Class E Airspace; Alameda, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace area at Alameda, CA. The base closure of Alameda Naval Air Station (NAS) has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the surface area no longer exist at Alameda NAS (Nimitz Field), CA.

EFFECTIVE DATE: 0901 UTC January 15, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by revoking the Class E airspace area at Alameda, CA (61FR 53880). This action will revoke controlled airspace since the purpose and requirements for the surface area no longer exist at Alameda NAS (Nimitz Field), CA. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be removed subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class E airspace area at Alameda, CA. The base closure of Alameda Naval Air Station (NAS) has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the surface area no longer exist at Alameda NAS (Nimitz Field), CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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 10034; 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 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 the 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 6002 Class E airspace.

* * * * *

AWP CA E2 Alameda NAS, CA [Removed]

* * * * *

Issued in Los Angeles, California, on November 29, 1996.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–32017 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Mallinckrodt Veterinary, Inc., to Veterinary Specialties, Inc.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION:

Mallinckrodt Veterinary, Inc., Mundelein, IL 60060, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA 65–107 for entromycin powder to Veterinary Specialties, Inc., 387 North Valley Ct., Barrington, IL 60010. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by alphabetically adding a new listing for Veterinary Specialties, Inc. The agency is also amending 21 CFR 520.154b to reflect the transfer of ownership.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Veterinary Specialties, Inc.'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''062925'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Veterinary Specialties, Inc., 387 North Valley Ct., Barrington, IL 60010	062925
* * * * *	

(2) * * *

Drug labeler code	Firm Name and address
* * * * *	
062925	Veterinary Specialties, Inc., 387 North Valley Ct., Barrington, IL 60010
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.154b [Amended]

4. Section 520.154b *Soluble bacitracin methylene disalicylate and streptomycin sulfate oral powder* is amended in paragraph (b) by removing ''011716'' and adding in its place ''062925''.

Dated: December 5, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–32067 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Carprofen Caplets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for oral use of nonsteroidal anti-inflammatory carprofen caplets in dogs for relief of pain and inflammation. Carprofen has been shown to be clinically effective for the relief of signs associated with osteoarthritis.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–053, which provides for oral use of carprofen caplets in dogs for the relief of pain and inflammation. Carprofen has been shown to be clinically effective for the relief of signs associated with osteoarthritis. The drug product is restricted to veterinary prescription use only. The NADA is approved as of October 25, 1996, and the regulations are amended by adding new 21 CFR 520.309 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning October 25, 1996, because no active ingredient (including any ester or salt thereof) of the drug has been approved previously in any other NADA.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.309 is added to read as follows:

§ 520.309 Carprofen caplets.

(a) *Specification*. Each caplet contains 25, 75, or 100 milligrams of carprofen.

(b) *Sponsor*. See No. 000069 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount*. 1 milligram per pound of body weight twice daily. Caplets are scored and dosage should be calculated in half-caplet increments.

(2) *Indications for use*. For the relief of pain and inflammation in dogs. Carprofen has been shown to be clinically effective for the relief of signs associated with osteoarthritis in dogs.

(3) *Limitations*. The safe use of carprofen in pregnant dogs, dogs used for breeding purposes, or in lactating bitches has not been established. As a class, cyclo-oxygenase inhibitory nonsteroidal anti-inflammatory drugs (NSAID's) may be associated with gastrointestinal and renal toxicity. Patients at greatest risk for renal toxicity are those on concomitant diuretic therapy, or those with renal, cardiovascular, and/or hepatic dysfunction. Because many NSAID's possess the potential to induce gastrointestinal ulceration, avoid or closely monitor concomitant use of carprofen with other anti-inflammatory drugs, such as corticosteroids and NSAID's. Carprofen treatment was not associated with renal toxicity or gastrointestinal ulceration in safety studies of up to 10 times the dose in dogs. Do not use in dogs with bleeding disorders (e.g., Von Willebrand's disease). Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 6, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–32068 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

New Animal Drugs and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Pfizer, Inc., to Intervet, Inc.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA 140–857 (luprostiol sterile solution) to Intervet, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966. Accordingly, FDA is amending the regulations in 21 CFR 522.1290 to reflect the change of sponsor.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1290 [Amended]

2. Section 522.1290 *Luprostiol sterile solution* is amended in paragraph (b) by removing ''000069'' and adding in its place ''057926''.

Dated: December 5, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–32072 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Propofol Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Mallinckrodt Veterinary, Inc. The NADA provides for intravenous use of propofol injection in dogs as an anesthetic.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1616.

SUPPLEMENTARY INFORMATION: Mallinckrodt Veterinary, Inc., 421 East Hawley St., Mundelein, IL 60060, filed NADA 141–070, which provides for intravenous use in dogs of Rapinovet™ Anesthetic Injection (each milliliter contains 10 milligrams of propofol). The drug is used as a single injection to provide general anesthesia for procedures lasting up to 5 minutes, for induction and maintenance of general anesthesia using incremental doses to effect, and for induction of general anesthesia where maintenance is provided by inhalant anesthetics. The drug is limited to use by or on the order of a licensed veterinarian. The NADA is approved as of November 7, 1996, and the regulations are amended in 21 CFR part 522 by adding new § 522.2005 to reflect the approval. The basis of approval is provided in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for a 5-year period of marketing exclusivity beginning November 7, 1996, because no active ingredient (including any ester or salt of the active ingredient) of the drug has been approved in any other application under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.2005 is added to read as follows:

§ 522.2005 Propofol injection.

(a) *Specifications.* The drug is a sterile, nonpyrogenic, oil-in-water emulsion containing 10 milligrams of propofol per milliliter.

(b) *Sponsor.* See No. 011716 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs.* (i) The drug is indicated for use as an anesthetic as follows: As a single injection to provide general anesthesia for procedures lasting up to 5 minutes; for induction and maintenance of general anesthesia using incremental doses to effect; for induction of general anesthesia where maintenance is provided by inhalant anesthetics.

(ii) The drug is administered by intravenous injection as follows: For induction of general anesthesia without the use of preanesthetics the dosage is 5.5 to 7.0 milligrams per kilogram (2.5 to 3.2 milligrams per pound); for the maintenance of general anesthesia without the use of preanesthetics the dosage is 1.1 to 3.3 milligrams per kilogram (0.5 to 1.5 milligrams per pound). The use of preanesthetic medication reduces propofol dose requirements.

(iii) Adequate data concerning safe use of propofol in pregnant and breeding dogs have not been obtained. Doses may need adjustment for geriatric or debilitated patients. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: December 6, 1996.

Stephen F. Sundlof,

Center for Veterinary Medicine.

[FR Doc. 96–32069 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Ceftiofur Sterile Powder for Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The supplemental NADA provides for intramuscular use in sheep of a reconstituted solution of ceftiofur sterile powder for treatment of sheep respiratory disease (pneumonia).

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed supplemental NADA 140–338, which provides for use of Naxcel® Sterile Powder (ceftiofur sodium) in sheep as a 50 milligrams per milliliter reconstituted injectable solution. The product is currently approved for use in cattle, swine, day-old chicks, horses, and dogs. The supplemental NADA is approved as of October 25, 1996, and the regulations are amended in 21 CFR 522.313 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Also, the regulations are amended in 21 CFR 556.113 to state that a tolerance for ceftiofur residues in edible tissues of sheep is not required.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because it does not contain substantial evidence of the effectiveness of the drug involved, any studies of animal safety or human food safety (other than bioequivalence or residue studies) required for the approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Food.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.313 is amended by adding new paragraph (d)(7) to read as follows:

§ 522.313 Ceftiofur sterile powder for injection.

* * * * *

(d) * * *

(7) *Sheep*—(i) *Amount.* 0.5 to 1.0 milligram per pound (1.1 to 2.2 milligrams per kilogram) of body weight.

(ii) *Indications for use.* For treatment of sheep respiratory disease (pneumonia) associated with *Pasteurella haemolytica* and/or *P. multocida.*

(iii) *Limitations.* For intramuscular use only. Treatment should be repeated at 24 hour intervals for a total of 3 consecutive days. Additional treatments may be given on days 4 and 5 for animals which do not show satisfactory response. Use of dosages in excess of those indicated or by unapproved routes of administration may result in illegal residues in tissues. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

§ 556.113 [Amended]

4. Section 556.113 *Ceftiofur* is amended by removing ''and poultry'' and by adding in its place ''poultry, and sheep''.

Dated: December 6, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–32071 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Semduramicin with Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for using approved single ingredient Type A medicated articles to make combination drug Type C medicated broiler chicken feeds containing semduramicin with bacitracin methylene disalicylate. The Type C medicated feed is used for prevention of coccidiosis and for improved feed efficiency.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1607.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–065, which provides for combining approved Type A medicated articles containing Aviax™ (semduramicin sodium) with BMD® (bacitracin methylene disalicylate) to make combination drug Type C medicated broiler chicken feed containing 22.7 grams (g) of semduramicin and 10 to 50 g of bacitracin methylene disalicylate. The Type C medicated feed is used for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati/E. mitis, E. necatrix,* and *E. tenella,* and for improved feed efficiency in broiler chickens. The NADA is approved as of October 18, 1996, and the regulations are amended by revising 21 CFR 558.76(d)(3)(xiv) and by adding 21 CFR 558.555(b)(3) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years marketing exclusivity beginning October 18, 1996, because the application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.76 is amended by revising paragraph (d)(3)(xiv) to read as follows:

§ 558.76 Bacitracin methylene disalicylate

* * * * *

(d) * * *

(3) * * *

(xiv) Semduramicin alone or in combination with roxarsone as in § 558.555.

3. Section 558.555 is amended by adding new paragraph (b)(3) to read as follows:

§ 558.555 Semduramicin.

* * * * *

(b) * * *

(3) *Amount.* Semduramicin 22.7 grams with bacitracin methylene disalicylate 10 to 50 grams per ton.

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati/E. mitis, E. necatrix,* and *E. tenella,* and for improved feed efficiency in broiler chickens.

(ii) *Limitations.* Feed continuously as sole ration. Use feed within 2 weeks of production. Do not feed to laying hens. Semduramicin as provided by 000069, bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) of this chapter.

Dated: December 6, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–32035 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 8697]

RIN 1545–AT91

Simplification of Entity Classification Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that classify certain business organizations under an elective regime. These regulations replace the existing classification rules.

DATES: These regulations are effective as of January 1, 1997.

For dates of applicability of these regulations, see Effective Dates under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mark D. Harris, (202) 622–3050; concerning foreign organizations, William H. Morris or Ronald M. Gootzeit, (202) 622–3880 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1486. Responses to these collections of information are required to obtain a benefit (to choose an entity's classification by election).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimates of the reporting burden in these final regulations are reflected in the burden estimates in Form 8832 (Entity Classification Election).

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On April 3, 1995, Notice 95–14 (1995–1 C.B. 297), relating to classification of business organizations under section 7701 of the Code, was published in the Internal Revenue Bulletin. A notice of public hearing was published in the Federal Register on May 10, 1995 (60 FR 24813). Written comments were received and a public hearing was held on July 20, 1995.

On May 13, 1996, the IRS and Treasury issued a notice of proposed rulemaking (61 FR 21989 [PS–43–95, 1996–24 I.R.B. 20]) under section 7701. The regulations proposed to replace the existing regulations for classifying certain business organizations with an elective regime. Comments responding to the notice were received, and a public hearing was held on August 21, 1996. After considering the comments that were received in response to the notice of proposed rulemaking and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

Section 7701(a)(2) of the Code defines a partnership to include a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and that is not a trust or estate or a corporation. Section 7701(a)(3) defines a corporation to include associations, joint-stock companies, and insurance companies.

The existing regulations for classifying business organizations as associations (which are taxable as corporations under section 7701(a)(3)) or as partnerships under section 7701(a)(2) are based on the historical differences under local law between partnerships and corporations. Treasury and the IRS believe that those rules have become increasingly formalistic. This document replaces those rules with a much simpler approach that generally is elective.

As stated in the preamble to the proposed regulations, in light of the increased flexibility under an elective regime for the creation of organizations classified as partnerships, Treasury and the IRS will continue to monitor carefully the uses of partnerships in the international context and will take appropriate action when partnerships are used to achieve results that are inconsistent with the policies and rules of particular Code provisions or of U.S. tax treaties.

A. Summary of the Regulations

Section 301.7701–1 provides an overview of the rules applicable in determining an organization's classification for federal tax purposes. The first step in the classification process is to determine whether there is a separate entity for federal tax purposes. The regulations explain that certain joint undertakings that are not entities under local law may nonetheless constitute separate entities for federal tax purposes; however, not all entities formed under local law are recognized as separate entities for federal tax purposes. Whether an organization is treated as an entity for federal tax purposes is a matter of federal tax law, and does not affect the rights and obligations of its owners under local law. For example, if a domestic limited liability company with a single individual owner is disregarded as an entity separate from its owner under § 301.7701–3, its individual owner is subject to federal income tax as if the company's business was operated as a sole proprietorship.

An organization that is recognized as a separate entity for federal tax purposes is either a trust or a business entity (unless a provision of the Code expressly provides for special treatment, such as the Qualified Settlement Fund rules (§ 1.468B) or the Real Estate Mortgage Investment Conduit (REMIC) rules, see section 860A(a)). The regulations provide that trusts generally do not have associates or an objective to carry on business for profit. The distinctions between trusts and business entities, although restated, are not changed by these regulations.

Section 301.7701–2 clarifies that business entities that are classified as corporations for federal tax purposes include corporations denominated as such under applicable law, as well as associations, joint-stock companies, insurance companies, organizations that conduct certain banking activities, organizations wholly owned by a State, organizations that are taxable as corporations under a provision of the Code other than section 7701(a)(3), and certain organizations formed under the laws of a foreign jurisdiction (including a U.S. possession, territory, or commonwealth).

The regulations in § 301.7701–2 include a special grandfather rule, under which an entity described in the list of foreign entities treated as per se corporations will nevertheless be classified as other than a corporation. The regulations also list certain situations where a grandfathered entity would lose its grandfathered status.

Any business entity that is not required to be treated as a corporation for federal tax purposes (referred to in the regulation as an *eligible entity*) may choose its classification under the rules of § 301.7701–3. Those rules provide that an eligible entity with at least two members can be classified as either a partnership or an association, and that an eligible entity with a single member can be classified as an association or can be disregarded as an entity separate from its owner. However, if the single owner of a business entity is a bank (as defined in section 581), then the special rules applicable to banks will continue to apply to the single owner as if the wholly owned entity were a separate entity.

In order to provide most eligible entities with the classification they would choose without requiring them to file an election, the regulations provide default classification rules that aim to match taxpayers' expectations (and thus reduce the number of elections that will be needed). The regulations adopt a passthrough default for domestic entities, under which a newly formed eligible entity will be classified as a partnership if it has at least two members, or will be disregarded as an entity separate from its owner if it has a single owner. The default for foreign entities is based on whether the members have limited liability. Thus a foreign eligible entity will be classified as an association if all members have limited liability. A foreign eligible entity will be classified as a partnership if it has two or more members and at least one member does not have limited liability; the entity will be disregarded as an entity separate from its owner if it has a single owner and that owner does not have limited liability. Finally, the default classification for an existing entity is the classification that the entity claimed immediately prior to the effective date of these regulations. An entity's default classification continues until the entity elects to change its classification by means of an affirmative election.

An eligible entity may affirmatively elect its classification on Form 8832, Entity Classification Election. The regulations require that the election be signed by each member of the entity or any officer, manager, or member of the entity who is authorized to make the election and who represents to having such authorization under penalties of perjury. An election will not be accepted unless it includes all of the required information, including the entity's taxpayer identifying number (TIN).

Taxpayers are reminded that a change in classification, no matter how achieved, will have certain tax consequences that must be reported. For example, if an organization classified as an association elects to be classified as a partnership, the organization and its owners must recognize gain, if any, under the rules applicable to liquidations of corporations.

B. Discussion of Comments on the General Approach and Scope of the Regulations

Several comments requested clarification with regard to the rules for determining when an owner of an interest in an organization will be respected as a bona fide owner for federal tax purposes. Some commentators were concerned, for example, that certain owners would be required to maintain certain net worth requirements. Other commentators, relying on Rev. Rul. 93–4, 1993–1 C.B. 225, suggested that if two wholly-owned subsidiaries of a common parent were the owners of an organization, those owners would not be respected as bona fide owners and the organization would be treated as having only one owner (the common parent). Although the determination of whether an organization has more than one owner is based on all the facts and circumstances, the fact that some or all of the owners of an organization are under common control does not require the common parent to be treated as the sole owner. Consistent with this approach, Rev. Rul. 93–4 treated two wholly owned subsidiaries as associates and then classified the foreign entity based on the four corporate characteristics under section 7701. While these four factors will no longer apply with the adoption of the regulations, determining whether the subsidiaries are associates continues to be an issue.

The IRS has received a number of comments asking for clarification of the tax treatment of entities that are wholly owned by an Indian tribe and incorporated under tribal law. Treasury and the IRS are currently studying this

issue and will, if necessary, issue separate guidance regarding this issue.

Most commentators agreed that inclusion of the list of foreign business entities treated as corporations per se was appropriate. However, several commentators requested clarification about certain foreign business entities on the per se list. Other commentators requested clarification whether and how the list of such corporations might be updated in the future. The regulations are clarified with respect to entities formed in the following jurisdictions: Aruba, Canada, People's Republic of China, Republic of China (Taiwan), India, Indonesia, Netherlands Antilles, and Sweden. Any further modifications will be announced in a notice of proposed rulemaking and will be prospective only.

Commentators also raised the issue of how to determine if a joint venture or other contractual arrangement that is considered a separate entity under these regulations is considered a foreign or domestic entity. This issue is outside the scope of these regulations and thus is not addressed in the final regulations.

Some commentators raised issues relating to the application of the grandfather rule for certain existing entities organized under foreign statutes included on the list of per se corporations. In particular, commentators requested clarification regarding existing entities that would be listed on the per se list. Commentators have asked whether an existing entity on the per se list which had claimed non-corporate status could retain that status, and, if so, whether it could subsequently elect to be treated as a corporation. Commentators also asked for clarification as to the effect of a deemed termination under section 708(b)(1)(B) or a division under section 708(b)(2)(B) on a grandfathered per se entity.

In response to these comments, the grandfather rules clarify that an entity on the list which was previously disregarded as a separate entity (i.e., treated as a branch) or was treated as a partnership may continue to be treated as such when the regulations become effective. Moreover, entities on the list which continue to treat themselves as branches or partnerships after the effective date of the regulations may subsequently elect to be treated as corporations. However, after such election they may not subsequently elect to be treated as a partnership or a branch. Finally, any termination under section 708(b)(1)(B) (except in the case of a sale or exchange of interests in an entity described in § 301.7701–2(d)(2) where the sale or exchange is to a related person within the meaning of sections 267(b) and 707(b) and occurs no later than 12 months after the date the entity is formed) or division under section 708(b)(2)(B) will end the grandfathered status of any entity on the per se list, and therefore the successor entity (or entities) will thereafter be permanently treated as a corporation.

Other commentators suggested that the requirement that an existing entity included on the per se list must have claimed passthrough treatment for all prior periods is burdensome and precludes grandfather treatment for entities that restructured in the past and recognized the resulting tax consequences. In response to these comments, the regulations are modified to indicate that an existing entity can continue to be treated as a non-corporate entity if it was in existence on May 8, 1996, and was reasonably treated as a non-corporate entity on that date (or formed thereafter pursuant to a written binding contract in effect on May 8, 1996, in which the parties agreed to engage (directly or indirectly) in an active and substantial business operation in the jurisdiction in which the entity is formed, and which would otherwise meet the grandfather rules if the date the entity is formed is substituted for May 8, 1996). If the entity changed its claimed tax status within the sixty months prior to May 8, 1996, the entity and its members must have recognized the tax consequences that resulted from that change in tax status. Moreover, the regulations clarify that the grandfather treatment applies if no person for whom the entity's classification was relevant on May 8, 1996, treats the entity as a corporation for purposes of filing such person's federal income tax returns, information returns, and withholding documents for the period including May 8, 1996.

One commentator suggested that it was unclear when the classification of a foreign entity is ''relevant'' for federal tax purposes. This determination is important, as it affects whether the grandfather rule, the default rule for existing entities, or the default rule for a newly formed foreign entity applies. In general, an entity's classification is relevant when its classification affects the liability of any person for federal tax or information purposes. The date that the classification of a foreign entity is relevant is the date an event occurs that causes an obligation to file a return or statement for which the classification of the entity must be determined.

C. Discussion of Comments Relating to the Elective Regime

Most of the commentators agreed that the default rules included in the proposed regulations generally would match taxpayers' expectations. However, some commentators expressed concern over the application of the default rule for newly formed foreign eligible entities which would treat such entities as associations if no member had unlimited liability. Specifically, certain commentators noted that under the definition of unlimited liability in the proposed regulations, certain contractual joint ventures which, under current law, would generally be classified as partnerships, would be treated as associations under the default rule. The members of these contractual joint ventures are not jointly and severally liable for all debts of the entity; rather, each member has unlimited liability for a certain proportion of the debts of the entity. To simplify the default rules, the regulations are modified to provide that a newly formed foreign eligible entity will—(1) be treated as a partnership if it has at least two members and at least one member does not have limited liability; (2) be treated as an association if all members of the entity have limited liability; and (3) be disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

The regulations are modified to provide that a member does not have limited liability if the member, by virtue of being a member, has personal liability for all or any portion of the debts of the entity.

Certain commentators asked for clarification of the default rule in the case where the relevant statute or law of a particular country provides for limited or unlimited liability. Generally, the regulations specify that only the statute or law is relevant. Where, however, the underlying statute allows the entity to specify in its organizational documents whether the members will have limited liability, the organizational documents may be relevant.

Some commentators requested that taxpayers be allowed to make classification elections with their first tax returns. The regulations retain the requirement that elections be made at the beginning of the taxable year. Treasury and the IRS continue to believe that it is appropriate to determine an entity's classification at the time that it begins its operations. Taxpayers can specify the date on which an election will be effective, provided that date is not more than 75

days prior to the date on which the election is filed (irrespective of when the interest was acquired) and not more than 12 months after the date the election was filed. If a taxpayer specifies an effective date more than 75 days prior to the date on which the election is filed, the election will be effective 75 days prior to the date on which the election was filed. If a taxpayer specifies an effective date more than 12 months from the filing date, the election will be effective 12 months after the date the election was filed. No election, whenever filed, will be effective before January 1, 1997.

One commentator expressed concern about the ability to make protective elections where there is uncertainty, for example, about an entity's status as a business entity. Such protective elections are not prohibited under the regulations.

The regulations limit the ability of an entity to make multiple classification elections by prohibiting more than one election to change an entity's classification during any sixty month period. One commentator suggested that the regulations be amended to waive application of this rule in certain circumstances, particularly when there has been a substantial change in ownership of the entity. In response to this comment, the regulations permit the Commissioner to waive the application of the sixty month limitation by letter ruling. However, waivers will not be granted unless there has been more than a fifty percent ownership change. The sixty month limitation only applies to a change in classification by election; the limitation does not apply if the organization's business is actually transferred to another entity.

Several commentators requested clarification concerning the classification of a foreign entity when the classification of the entity becomes relevant for federal tax purposes after a period during which the classification of the entity was not relevant. Generally, such an entity will retain its prior classification. However, if the classification of a foreign eligible entity which was previously relevant for federal tax purposes ceases to be relevant for sixty consecutive months, the entity's classification will be determined initially under the default classification when the classification of the foreign eligible entity again becomes relevant.

Some commentators requested clarification regarding the rule permitting elections to be signed by any authorized officer, manager, or member of the electing entity. The regulations retain this rule, as it provides taxpayers with flexibility in complying with the election requirements. The determination of whether a person is authorized to make an election is based on local law. Thus, the election can be made by anyone authorized to act on behalf of the entity.

Several commentators asked for guidance regarding the necessary signatures on the classification election. The regulations are modified to provide that if the election is made by all of the members, each person who is an owner at the time the election is made must consent to the election. However, if an election is to be effective for any period prior to the date it is filed, each person who was an owner between the date the election is to be effective and the date the election is filed (even if by an authorized person), and who is not an owner at the time the election is filed, must also consent to the election.

Several commentators requested that the classification election be coordinated with the election under section 856(c)(1) to be a real estate investment trust (REIT). Because the latter election is required to be made with the REIT's first tax return, the regulations are modified to provide that an election by an eligible entity to be a REIT will be treated as a deemed election to be classified as an association, effective for the entire period during which REIT status is claimed.

Some commentators suggested that the regulations should not require an entity or its direct or indirect owners to attach a copy of the entity's election to their federal tax returns. Specifically, some commentators were concerned that the failure of one owner to attach a copy of the election to the owner's return would void an otherwise valid election. The regulations retain the requirement that taxpayers must attach a copy of the election to their returns, but clarify that failure to do so will not invalidate an otherwise valid election. Although the failure to attach a copy will not adversely affect an otherwise valid election, taxpayers are reminded that each member of the entity is required to file returns that are consistent with the entity's election. Failure to attach the election form to a federal tax or information return as directed in the regulations may give rise to penalties against the non-filing party. Other applicable penalties may also apply to parties who file federal tax or information returns inconsistent with the entity's election.

One commentator asked for guidance on the treatment of conversions by election from partnership to corporation and from corporation to partnership. This issue is outside the scope of these classification rules and thus is not addressed in these regulations. Treasury and the IRS, however, are actively considering issuing guidance on the treatment of such conversions.

D. Effective Dates

The regulations are effective as of January 1, 1997. The regulations provide a special transition rule for existing entities. The IRS will not challenge the prior classification of an existing eligible entity, or an existing entity described on the per se list, for periods prior to January 1, 1997, if—(1) the entity had a reasonable basis (within the meaning of section 6662) for its claimed classification; (2) the entity and all members of the entity recognized the federal tax consequences of any change in the entity's classification within the sixty months prior to January 1, 1997; and (3) neither the entity nor any member had been notified in writing on or before May 8, 1996, that the classification of the entity was under examination (in which case the entity's classification will be determined in the examination).

Some commentators were concerned that an entity organized after May 8, 1996, would be excluded from this transition rule for existing entities. Because § 301.7701–3(f)(2) applies to entities that were in existence prior to January 1, 1997, no change is necessary to provide relief for entities organized after May 8, 1996.

Some commentators were concerned about entities that claimed to be trusts for the period prior to January 1, 1997, but are subsequently determined to be business entities. In that case, the entity's claimed classification for purposes of applying the provisions of the special transition rule will be the business entity classification claimed by the entity after it has been determined to be a business entity.

Effect on Other Documents

The Service has published a number of revenue rulings and revenue procedures interpreting the section 7701 regulations. The Service is currently reviewing these revenue rulings and revenue procedures to determine which are affected by the publication of these regulations. See accompanying Notice 97–1. Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5

U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the automatic classification rules of § 301.7701–2(b) and the default classification rules of § 301.7701–3(b) will operate in such a manner that only a limited number of entities will need to make an election under § 301.7701–3(c) to determine their classification. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Armando Gomez and Mark D. Harris of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) and William H. Morris and Ronald M. Gootzeit of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.581–1 is revised to read as follows:

§ 1.581–1 Banks.

(a) In order to be a bank as defined in section 581, an institution must be a corporation for federal tax purposes. See § 301.7701–2(b) of this chapter for the definition of a corporation.

(b) This section is effective as of January 1, 1997.

Par. 3. Section 1.581–2 is amended as follows:

1. Paragraph (a) is removed.

2. Paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

3. Newly designated paragraph (a) is amended by revising the second and last sentences.

The revisions read as follows:

§ 1.581–2 Mutual savings banks, building and loan associations, and cooperative banks.

(a) * * * See section 593 for special rules concerning reserves for bad debts. * * * See also section 594 and § 1.594–1 for special rules governing the taxation of a mutual savings bank conducting a life insurance business.

* * * * *

Par. 4. In § 1.761–1, paragraph (a) is revised to read as follows:

§ 1.761–1 Terms defined.

(a) *Partnership.* The term *partnership* means a partnership as determined under §§ 301.7701–1, 301.7701–2, and 301.7701–3 of this chapter.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. Section 301.6109–1 is amended as follows:

1. Paragraph (b)(2)(iii) is amended by removing the language ''and'' at the end of the paragraph.

2. Paragraph (b)(2)(iv) is amended by removing the period at the end of the paragraph, and replacing it with the language ''; and''.

3. Paragraph (b)(2)(v) is added.

4. The text of paragraph (d)(2) is redesignated as paragraph (d)(2)(i).

5. A paragraph heading is added for newly designated paragraph (d)(2)(i).

6. Paragraph (d)(2)(ii) is added.

The revisions and additions read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(b) * * *

(2) * * *

(v) A foreign person that makes an election under § 301.7701–3(c).

* * * * *

(d) * * *

(2) *Employer identification number*—

(i) *In general.* * * *

(ii) *Special rule for entities electing to change their federal tax classification under § 301.7701–3(c).* Any entity that has an employer identification number and then elects under § 301.7701–3(c) to change its federal tax classification will retain that employer identification number.

* * * * *

Par. 7. Sections 301.7701–1, 301.7701–2, and 301.7701–3 are revised to read as follows:

§ 301.7701–1 Classification of organizations for federal tax purposes.

(a) *Organizations for federal tax purposes*—(1) *In general.* The Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

(2) *Certain joint undertakings give rise to entities for federal tax purposes.* A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co- owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. Nevertheless, a joint undertaking merely to share expenses does not create a separate entity for federal tax purposes. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they have not created a separate entity for federal tax purposes. Similarly, mere co-ownership of property that is maintained, kept in repair, and rented or leased does not constitute a separate entity for federal tax purposes. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes.

(3) *Certain local law entities not recognized.* An entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State. Similarly, tribes incorporated under section 17 of the Indian Reorganization

Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 503, are not recognized as separate entities for federal tax purposes.

(4) *Single owner organizations.* Under §§ 301.7701–2 and 301.7701–3, certain organizations that have a single owner can choose to be recognized or disregarded as entities separate from their owners.

(b) *Classification of organizations.* The classification of organizations that are recognized as separate entities is determined under §§ 301.7701–2, 301.7701–3, and 301.7701–4 unless a provision of the Internal Revenue Code (such as section 860A addressing Real Estate Mortgage Investment Conduits (REMICs)) provides for special treatment of that organization. For the classification of organizations as trusts, see § 301.7701–4. That section provides that trusts generally do not have associates or an objective to carry on business for profit. Sections 301.7701–2 and 301.7701–3 provide rules for classifying organizations that are not classified as trusts.

(c) *Qualified cost sharing arrangements.* A qualified cost sharing arrangement that is described in § 1.482–7 of this chapter and any arrangement that is treated by the Commissioner as a qualified cost sharing arrangement under § 1.482–7 of this chapter is not recognized as a separate entity for purposes of the Internal Revenue Code. See § 1.482–7 of this chapter for the proper treatment of qualified cost sharing arrangements.

(d) *Domestic and foreign entities.* For purposes of this section and §§ 301.7701–2 and 301.7701–3, an entity is a domestic entity if it is created or organized in the United States or under the law of the United States or of any State; an entity is foreign if it is not domestic. See sections 7701(a)(4) and (a)(5).

(e) *State.* For purposes of this section and § 301.7701–2, the term *State* includes the District of Columbia.

(f) *Effective date.* The rules of this section are effective as of January 1, 1997.

§ 301.7701–2 Business entities; definitions.

(a) *Business entities.* For purposes of this section and § 301.7701–3, a *business entity* is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701–3) that is not properly classified as a trust under § 301.7701–4 or otherwise subject to special treatment under the Internal Revenue Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

(b) *Corporations.* For federal tax purposes, the term *corporation* means—

(1) A business entity organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic;

(2) An association (as determined under § 301.7701–3);

(3) A business entity organized under a State statute, if the statute describes or refers to the entity as a joint-stock company or joint-stock association;

(4) An insurance company;

(5) A State-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 *et seq.*, or a similar federal statute;

(6) A business entity wholly owned by a State or any political subdivision thereof;

(7) A business entity that is taxable as a corporation under a provision of the Internal Revenue Code other than section 7701(a)(3); and

(8) *Certain foreign entities*—(i) *In general.* Except as provided in paragraphs (b)(8)(ii) and (d) of this section, the following business entities formed in the following jurisdictions:

American Samoa, Corporation
Argentina, Sociedad Anonima
Australia, Public Limited Company
Austria, Aktiengesellschaft
Barbados, Limited Company
Belgium, Societe Anonyme
Belize, Public Limited Company
Bolivia, Sociedad Anonima
Brazil, Sociedade Anonima
Canada, Corporation and Company
Chile, Sociedad Anonima
People's Republic of China, Gufen Youxian Gongsi
Republic of China (Taiwan), Ku-fen Yu-hsien Kung-szu
Colombia, Sociedad Anonima
Costa Rica, Sociedad Anonima
Cyprus, Public Limited Company
Czech Republic, Akciova Spolecnost
Denmark, Aktieselskab
Ecuador, Sociedad Anonima or Compania Anonima
Egypt, Sharikat Al-Mossahamah
El Salvador, Sociedad Anonima
Finland, Osakeyhtio/Aktiebolag
France, Societe Anonyme
Germany, Aktiengesellschaft
Greece, Anonymos Etairia
Guam, Corporation
Guatemala, Sociedad Anonima
Guyana, Public Limited Company
Honduras, Sociedad Anonima
Hong Kong, Public Limited Company
Hungary, Reszvenytarsasag
Iceland, Hlutafelag
India, Public Limited Company
Indonesia, Perseroan Terbuka
Ireland, Public Limited Company
Israel, Public Limited Company
Italy, Societa per Azioni
Jamaica, Public Limited Company
Japan, Kabushiki Kaisha
Kazakstan, Ashyk Aktsionerlik Kogham
Republic of Korea, Chusik Hoesa
Liberia, Corporation
Luxembourg, Societe Anonyme
Malaysia, Berhad
Malta, Partnership *Anonyme*
Mexico, Sociedad Anonima
Morocco, Societe Anonyme
Netherlands, Naamloze Vennootschap
New Zealand, Limited Company
Nicaragua, Compania Anonima
Nigeria, Public Limited Company
Northern Mariana Islands, Corporation
Norway, Aksjeselskap
Pakistan, Public Limited Company
Panama, Sociedad Anonima
Paraguay, Sociedad Anonima
Peru, Sociedad Anonima
Philippines, Stock Corporation
Poland, Spolka Akcyjna
Portugal, Sociedade Anonima
Puerto Rico, Corporation
Romania, Societe pe Actiuni
Russia, Otkrytoye Aktsionernoy Obshchestvo
Saudi Arabia, Sharikat Al-Mossahamah
Singapore, Public Limited Company
Slovak Republic, Akciova Spolocnost
South Africa, Public Limited Company
Spain, Sociedad Anonima
Surinam, Naamloze Vennootschap
Sweden, Publika Aktiebolag
Switzerland, Aktiengesellschaft
Thailand, Borisat Chamkad (Mahachon)
Trinidad and Tobago, Public Limited Company
Tunisia, Societe Anonyme
Turkey, Anonim Sirket
Ukraine, Aktsionerne Tovaristvo Vidkritogo Tipu
United Kingdom, Public Limited Company
United States Virgin Islands, Corporation
Uruguay, Sociedad Anonima
Venezuela, Sociedad Anonima or Compania Anonima

(ii) *Exceptions in certain cases.* The following entities will not be treated as corporations under paragraph (b)(8)(i) of this section:

(A) With regard to Canada, any corporation or company formed under any federal or provincial law which provides that the liability of all of the members of such corporation or company will be unlimited; and

(B) With regard to India, a company deemed to be a public limited company solely by operation of Section 43A(1) (relating to corporate ownership of the company), section 43A(1A) (relating to annual average turnover), or section 43A(1B) (relating to ownership interests in other companies) of the Companies Act, 1956 (or any combination of these), provided that the organizational documents of such deemed public limited company continue to meet the requirements of section 3(1)(iii) of the Companies Act, 1956.

(iii) *Public companies.* With regard to Cyprus, Hong Kong, Jamaica, and Trinidad and Tobago, the term public limited company includes any limited company which is not a private limited company under the laws of those jurisdictions.

(iv) *Limited companies.* Any reference to a limited company (whether public or private) in paragraph (b)(8)(i) of this section includes, as the case may be, companies limited by shares and companies limited by guarantee.

(v) *Multilingual countries.* Different linguistic renderings of the name of an entity listed in paragraph (b)(8)(i) of this section shall be disregarded. For example, an entity formed under the laws of Switzerland as a Societe Anonyme will be a corporation and treated in the same manner as an Aktiengesellschaft.

(c) *Other business entities.* For federal tax purposes—

(1) The term *partnership* means a business entity that is not a corporation under paragraph (b) of this section and that has at least two members.

(2) *Wholly owned entities*—(i) *In general.* A business entity that has a single owner and is not a corporation under paragraph (b) of this section is disregarded as an entity separate from its owner.

(ii) *Special rule for certain business entities.* If the single owner of a business entity is a bank (as defined in section 581), then the special rules applicable to banks will continue to apply to the single owner as if the wholly owned entity were a separate entity.

(d) *Special rule for certain foreign business entities*—(1) *In general.* Except as provided in paragraph (d)(3) of this section, a foreign business entity described in paragraph (b)(8)(i) of this section will not be treated as a corporation under paragraph (b)(8)(i) of this section if—

(i) The entity was in existence on May 8, 1996;

(ii) The entity's classification was relevant (as defined in § 301.7701–3(d)) on May 8, 1996;

(iii) No person (including the entity) for whom the entity's classification was relevant on May 8, 1996, treats the entity as a corporation for purposes of filing such person's federal income tax returns, information returns, and withholding documents for the taxable year including May 8, 1996;

(iv) Any change in the entity's claimed classification within the sixty months prior to May 8, 1996, occurred solely as a result of a change in the organizational documents of the entity, and the entity and all members of the entity recognized the federal tax consequences of any change in the entity's classification within the sixty months prior to May 8, 1996;

(v) A reasonable basis (within the meaning of section 6662) existed on May 8, 1996, for treating the entity as other than a corporation; and

(vi) Neither the entity nor any member was notified in writing on or before May 8, 1996, that the classification of the entity was under examination (in which case the entity's classification will be determined in the examination).

(2) *Binding contract rule.* If a foreign business entity described in paragraph (b)(8)(i) of this section is formed after May 8, 1996, pursuant to a written binding contract (including an accepted bid to develop a project) in effect on May 8, 1996, and all times thereafter, in which the parties agreed to engage (directly or indirectly) in an active and substantial business operation in the jurisdiction in which the entity is formed, paragraph (d)(1) of this section will be applied to that entity by substituting the date of the entity's formation for May 8, 1996.

(3) *Termination of grandfather status*—(i) *In general.* An entity that is not treated as a corporation under paragraph (b)(8)(i) of this section by reason of paragraph (d)(1) or (d)(2) of this section will be treated permanently as a corporation under paragraph (b)(8)(i) of this section from the earliest of:

(A) The effective date of an election to be treated as an association under § 301.7701–3;

(B) A termination of the partnership under section 708(b)(1)(B) (regarding sale or exchange of 50 percent or more of the total interest in an entity's capital or profits within a twelve month period); or

(C) A division of the partnership under section 708(b)(2)(B).

(ii) *Special rule for certain entities.* For purposes of paragraph (d)(2) of this section, paragraph (d)(3)(i)(B) of this section shall not apply if the sale or exchange of interests in the entity is to a related person (within the meaning of sections 267(b) and 707(b)) and occurs no later than twelve months after the date of the formation of the entity.

(e) *Effective date.* The rules of this section are effective as of January 1, 1997.

§ 301.7701–3 Classification of certain business entities.

(a) *In general.* A business entity that is not classified as a corporation under § 301.7701–2(b) (1), (3), (4), (5), (6), (7), or (8) (an *eligible entity*) can elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701–2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election. Thus, elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification. An entity whose classification is determined under the default classification retains that classification (regardless of any changes in the members' liability that occurs at any time during the time that the entity's classification is relevant as defined in paragraph (d) of this section) until the entity makes an election to change that classification under paragraph (c)(1) of this section. Paragraph (c) of this section provides rules for making express elections. Paragraph (d) of this section provides special rules for foreign eligible entities. Paragraph (e) of this section provides special rules for classifying entities resulting from partnership terminations and divisions under section 708(b). Paragraph (f) of this section sets forth the effective date of this section and a special rule relating to prior periods.

(b) *Classification of eligible entities that do not file an election*—(1) *Domestic eligible entities.* Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a domestic eligible entity is—

(i) A partnership if it has two or more members; or

(ii) Disregarded as an entity separate from its owner if it has a single owner.

(2) *Foreign eligible entities*—(i) *In general.* Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a foreign eligible entity is—

(A) A partnership if it has two or more members and at least one member does not have limited liability;

(B) An association if all members have limited liability; or

(C) Disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

(ii) *Definition of limited liability.* For purposes of paragraph (b)(2)(i) of this section, a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member. This determination is based solely on the statute or law pursuant to which the entity is organized, except that if the underlying statute or law allows the entity to specify in its organizational documents whether the members will have limited liability, the organizational documents may also be relevant. For purposes of this section, a member has personal liability if the creditors of the entity may seek satisfaction of all or any portion of the debts or claims against the entity from the member as such. A member has personal liability for purposes of this paragraph even if the member makes an agreement under which another person (whether or not a member of the entity) assumes such liability or agrees to indemnify that member for any such liability.

(3) *Existing eligible entities*—(i) *In general.* Unless the entity elects otherwise, an eligible entity in existence prior to the effective date of this section will have the same classification that the entity claimed under §§ 301.7701–1 through 301.7701–3 as in effect on the date prior to the effective date of this section; except that if an eligible entity with a single owner claimed to be a partnership under those regulations, the entity will be disregarded as an entity separate from its owner under this paragraph (b)(3)(i). For special rules regarding the classification of such entities for periods prior to the effective date of this section, see paragraph (f)(2) of this section.

(ii) *Special rules.* For purposes of paragraph (b)(3)(i) of this section, a foreign eligible entity is treated as being in existence prior to the effective date of this section only if the entity's classification was relevant (as defined in paragraph (d) of this section) at any time during the sixty months prior to the effective date of this section. If an entity claimed different classifications prior to the effective date of this section, the entity's classification for purposes of paragraph (b)(3)(i) of this section is the last classification claimed by the entity. If a foreign eligible entity's classification is relevant prior to the effective date of this section, but no federal tax or information return is filed or the federal tax or information return does not indicate the classification of the entity, the entity's classification for the period prior to the effective date of this section is determined under the regulations in effect on the date prior to the effective date of this section.

(c) *Elections*—(1) *Time and place for filing*—(i) *In general.* Except as provided in paragraphs (c)(1) (iv) and (v) of this section, an eligible entity may elect to be classified other than as provided under paragraph (b) of this section, or to change its classification, by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832. An election will not be accepted unless all of the information required by the form and instructions, including the taxpayer identifying number of the entity, is provided on Form 8832. See § 301.6109–1 for rules on applying for and displaying Employer Identification Numbers.

(ii) *Further notification of elections.* An eligible entity required to file a federal tax or information return for the taxable year for which an election is made under paragraph (c)(1)(i) of this section must attach a copy of its Form 8832 to its federal tax or information return for that year. If the entity is not required to file a return for that year, a copy of its Form 8832 must be attached to the federal income tax or information return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective. An indirect owner of the entity does not have to attach a copy of the Form 8832 to its return if an entity in which it has an interest is already filing a copy of the Form 8832 with its return. If an entity, or one of its direct or indirect owners, fails to attach a copy of a Form 8832 to its return as directed in this section, an otherwise valid election under paragraph (c)(1)(i) of this section will not be invalidated, but the non-filing party may be subject to penalties, including any applicable penalties if the federal tax or information returns are inconsistent with the entity's election under paragraph (c)(1)(i) of this section.

(iii) *Effective date of election.* An election made under paragraph (c)(1)(i) of this section will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed. If an election specifies an effective date more than 12 months from the date on which the election is filed, it will be effective 12 months after the date it was filed. If an election specifies an effective date before January 1, 1997, it will be effective as of January 1, 1997.

(iv) *Limitation.* If an eligible entity makes an election under paragraph (c)(1)(i) of this section to change its classification (other than an election made by an existing entity to change its classification as of the effective date of this section), the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the sixty months if more than fifty percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or on the effective date of the entity's prior election.

(v) *Deemed elections*—(A) *Exempt organizations.* An eligible entity that has been determined to be, or claims to be, exempt from taxation under section 501(a) is treated as having made an election under this section to be classified as an association. Such election will be effective as of the first day for which exemption is claimed or determined to apply, regardless of when the claim or determination is made, and will remain in effect unless an election is made under paragraph (c)(1)(i) of this section after the date the claim for exempt status is withdrawn or rejected or the date the determination of exempt status is revoked.

(B) *Real estate investment trusts.* An eligible entity that files an election under section 856(c)(1) to be treated as a real estate investment trust is treated as having made an election under this section to be classified as an association. Such election will be effective as of the first day the entity is treated as a real estate investment trust.

(vi) *Examples.* The following examples illustrate the rules of this paragraph (c)(1):

Example 1. On July 1, 1998, X, a domestic corporation, purchases a 10% interest in Y, an eligible entity formed under Country A law in 1990. The entity's classification was not relevant to any person for federal tax or information purposes prior to X's acquisition of an interest in Y. Thus, Y is not considered to be in existence on the effective date of this section for purposes of paragraph (b)(3) of this section. Under the applicable Country A

statute, all members of Y have limited liability as defined in paragraph (b)(2)(ii) of this section. Accordingly, Y is classified as an association under paragraph (b)(2)(i)(B) of this section unless it elects under this paragraph (c) to be classified as a partnership. To be classified as a partnership as of July 1, 1998, Y must file a Form 8832 by September 13, 1998. See paragraph (c)(1)(i) of this section. Because an election cannot be effective more than 75 days prior to the date on which it is filed, if Y files its Form 8832 after September 13, 1998, it will be classified as an association from July 1, 1998, until the effective date of the election. In that case, it could not change its classification by election under this paragraph (c) during the sixty months succeeding the effective date of the election.

Example 2. (i) Z is an eligible entity formed under Country B law and is in existence on the effective date of this section within the meaning of paragraph (b)(3) of this section. Prior to the effective date of this section, Z claimed to be classified as an association. Unless Z files an election under this paragraph (c), it will continue to be classified as an association under paragraph (b)(3) of this section.

(ii) Z files a Form 8832 pursuant to this paragraph (c) to be classified as a partnership, effective as of the effective date of this section. Z can file an election to be classified as an association at any time thereafter, but then would not be permitted to change its classification by election during the sixty months succeeding the effective date of that subsequent election.

(2) *Authorized signatures*—(i) *In general.* An election made under paragraph (c)(1)(i) of this section must be signed by—

(A) Each member of the electing entity who is an owner at the time the election is filed; or

(B) Any officer, manager, or member of the electing entity who is authorized (under local law or the entity's organizational documents) to make the election and who represents to having such authorization under penalties of perjury.

(ii) *Retroactive elections.* For purposes of paragraph (c)(2)(i) of this section, if an election under paragraph (c)(1)(i) of this section is to be effective for any period prior to the time that it is filed, each person who was an owner between the date the election is to be effective and the date the election is filed, and who is not an owner at the time the election is filed, must also sign the election.

(d) *Special rules for foreign eligible entities*—(1) For purposes of this section, a foreign eligible entity's classification is relevant when its classification affects the liability of any person for federal tax or information purposes. For example, a foreign entity's classification would be relevant if U.S. income was paid to the entity and the determination by the withholding agent of the amount to be withheld under chapter 3 of the Internal Revenue Code (if any) would vary depending upon whether the entity is classified as a partnership or as an association. Thus, the classification might affect the documentation that the withholding agent must receive from the entity, the type of tax or information return to file, or how the return must be prepared. The date that the classification of a foreign eligible entity is relevant is the date an event occurs that creates an obligation to file a federal tax return, information return, or statement for which the classification of the entity must be determined. Thus, the classification of a foreign entity is relevant, for example, on the date that an interest in the entity is acquired which will require a U.S. person to file an information return on Form 5471.

(2) *Special rule when classification is no longer relevant.*—If the classification of a foreign eligible entity which was previously relevant for federal tax purposes ceases to be relevant for sixty consecutive months, the entity's classification will initially be determined under the default classification when the classification of the foreign eligible entity again becomes relevant. The date that the classification of a foreign entity ceases to be relevant is the date an event occurs that causes the classification to no longer be relevant, or, if no event occurs in a taxable year that causes the classification to be relevant, then the date is the first day of that taxable year.

(e) *Coordination with section 708(b).* Except as provided in § 301.7701–2(d)(3) (regarding termination of grandfather status for certain foreign business entities), an entity resulting from a transaction described in section 708(b)(1)(B) (partnership termination due to sales or exchanges) or section 708(b)(2)(B) (partnership division) is a partnership.

(f) *Effective date*—(1) *In general.* The rules of this section are effective as of January 1, 1997.

(2) *Prior treatment of existing entities.* In the case of a business entity that is not described in § 301.7701–2(b) (1), (3), (4), (5), (6), or (7), and that was in existence prior to January 1, 1997, the entity's claimed classification(s) will be respected for all periods prior to January 1, 1997, if—

(i) The entity had a reasonable basis (within the meaning of section 6662) for its claimed classification;

(ii) The entity and all members of the entity recognized the federal tax consequences of any change in the entity's classification within the sixty months prior to January 1, 1997; and

(iii) Neither the entity nor any member was notified in writing on or before May 8, 1996, that the classification of the entity was under examination (in which case the entity's classification will be determined in the examination).

Par. 8. Section 301.7701–4 is amended as follows:

1. The last sentence of paragraphs (b), (c)(1), (c)(2) *Example 1,* and (c)(2) *Example 3* are revised.

2. Paragraph (f) is added.

The revisions and addition read as follows:

§ 301.7701–4 Trusts.

* * * * *

(b) *Business trusts.* * * * The fact that any organization is technically cast in the trust form, by conveying title to property to trustees for the benefit of persons designated as beneficiaries, will not change the real character of the organization if the organization is more properly classified as a business entity under § 301.7701–2.

(c) * * *

(1) * * * An investment trust with multiple classes of ownership interests ordinarily will be classified as a business entity under § 301.7701–2; however, an investment trust with multiple classes of ownership interests, in which there is no power under the trust agreement to vary the investment of the certificate holders, will be classified as a trust if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiple classes of ownership interests is incidental to that purpose.

(2) * * *

Example 1. * * * As a consequence, the existence of multiple classes of trust ownership is not incidental to any purpose of the trust to facilitate direct investment, and, accordingly, the trust is classified as a business entity under § 301.7701–2.

* * * * *

Example 3. * * * Accordingly, the trust is classified as a business entity under § 301.7701–2.

* * * * *

(f) *Effective date.* The rules of this section generally apply to taxable years beginning after December 31, 1960. Paragraph (e)(5) of this section contains rules of applicability for paragraph (e) of this section. In addition, the last sentences of paragraphs (b), (c)(1), and (c)(2), *Example 1* and *Example 3* of this section, are effective as of January 1, 1997.

Par. 9. Section 301.7701–6 is revised to read as follows:

§ 301.7701–6 Definitions; person, fiduciary.

(a) *Person.* The term *person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group. The term also includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(b) *Fiduciary*—(1) *In general.* Fiduciary is a term that applies to persons who occupy positions of peculiar confidence toward others, such as trustees, executors, and administrators. A fiduciary is a person who holds in trust an estate to which another has a beneficial interest, or receives and controls income of another, as in the case of receivers. A committee or guardian of the property of an incompetent person is a fiduciary.

(2) *Fiduciary distinguished from agent.* There may be a fiduciary relationship between an agent and a principal, but the word agent does not denote a fiduciary. An agent having entire charge of property, with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the Internal Revenue Code. In cases when no legal trust has been created in the estate controlled by the agent and attorney, the liability to make a return rests with the principal.

(c) *Effective date.* The rules of this section are effective as of January 1, 1997.

§ 301.7701–7 [Removed]

Par. 10. Section 301.7701–7 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 12. In § 602.101, paragraph (c) is amended by adding a new entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.7701–3	1545–1486
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 10, 1996.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 96–31997 Filed 12–17–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–031]

North Carolina State Plan; Final Approval Determination

December 10, 1996.

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final State plan approval.

SUMMARY: This document amends OSHA's regulations to reflect the Assistant Secretary's decision granting final approval to the North Carolina State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA's standards and enforcement authority no longer apply to occupational safety and health issues covered by the North Carolina plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over private sector maritime activities, employment on Indian reservations, enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government, railroad employment, and enforcement on military bases. Federal jurisdiction remains in effect with respect to Federal government employers and employees.

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq*, (the ''Act'') provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State Plan submission and approval are set forth in regulations at 29 CFR part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and .4, finds that the plan provides or will provide for State standards and enforcement which are ''at least as effective'' as Federal standards and enforcement, ''initial approval'' is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary ''developmental steps'' to meet the criteria within a three-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a ''certification of completion of developmental steps'' when all of a State's developmental commitments have been satisfactorily met (29 CFR 1902.34).

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an ''operational status agreement'' with OSHA (29 CFR 1954.3(f)). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under

the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied.

An affirmative determination under section 18(e) of the Act (usually referred to as ''final approval'' of the State plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for section 18(e) determinations are found at 29 CFR part 1902, subpart D. In general, in order to be granted final approval, actual performance by the State must be ''at least as effective'' overall as the Federal OSHA program in all areas covered under the State plan.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a court order by the U.S. District Court for the District of Columbia pursuant to the U.S. Court of Appeals'' decision in *AFL–CIO* v. *Marshall, 570 F.2d 1030 (D.C. Cir 1978),* that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a ''fully effective'' enforcement program.

The last requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective continuing evaluation of whether the State performance meets the statutory and regulatory criteria for final and continuing approval.

History of the North Carolina Plan and of Its Compliance Staffing Benchmarks

North Carolina Plan

A history of the North Carolina State plan, a description of its provisions, and a discussion of the compliance staffing benchmarks established for North Carolina was contained in the September 13, 1996, Federal Register notice (61 FR 48446) proposing that final approval under Section 18(e) of the Act be granted. The North Carolina State plan was submitted on November 27, 1972, initially approved on February 1, 1973 (38 FR 3041), certified as having completed all developmental steps on October 5, 1976 (41 FR 43896), concurrent Federal enforcement jurisdiction suspended on February 20, 1975 (40 FR 16843), reinstated on October 24, 1991 (56 FR 55192) and again suspended on March 7, 1995 (44 FR 12416); and revised compliance staffing benchmarks for North Carolina were approved on January 17, 1986 (51 FR 2481) and June 4, 1996 (61 FR 28053).

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR 1902, Subpart D. On September 13, 1996, OSHA published notice (61 FR 48446) of the eligibility of the North Carolina State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted. The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Integrated Management Information System, and staffing which meets the revised State staffing benchmarks.

The September 13 Federal Register notice set forth a general description of the North Carolina State plan and summarized the results of Federal OSHA monitoring of State operations during the period from October 1, 1993 through June 30, 1996. In addition to the information set forth in the notice itself, OSHA made available as part of the record extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which North Carolina operates its plan, and copies of all previous Federal Register notices regarding the plan.

Copies of the most recent comprehensive evaluation report, the October 1, 1993 through September 30, 1995, Biennial Evaluation Report, and the ''18(e) Evaluation Report'', covering the period of October 1, 1995 through June 30, 1996 of the North Carolina Plan which was extensively summarized in the September 13 proposal and provided the principal factual basis for the proposed 18(e) determination, were included in the docket.

To assist and encourage public participation in the 18(e) determination, copies of all docket materials were maintained in the OSHA Docket Office in Washington, DC., in the OSHA Regional Office in Atlanta, Georgia, and at the North Carolina Department of Labor, Division of Occupational Safety and Health in Raleigh, North Carolina. Summaries of the September 13 notice, with an invitation for public comments, were published in North Carolina on September 20, 1996, in the following newspapers: Charlotte Observer, Winston-Salem Journal, Asheville Citizen Times, Wilmington Morning Star, Raleigh News and Observer, and The Greensboro New and Record.

The September 13 notice invited interested persons to submit by October 15 written comments and views regarding the North Carolina plan and whether final approval should be granted. An opportunity to request an informal public hearing also was provided. Twenty-six (26) comments were received in response to this proposal; none requested an informal hearing.

Summary and Evaluation of Comments

OSHA has encouraged interested members of the public to provide information and views regarding operations under the North Carolina plan to supplement the information already gathered during OSHA monitoring and evaluation of plan administration.

In response to the September 13 proposal, OSHA received comments from: Don Beussee, Director, Health and Safety Services, Burlington Industries, Inc. [Ex. 14–1]; Jim H. Conner, Executive Vice President, The American Yarn Spinners Association, Inc. [Ex. 14–2]; Linda Moore, Chairperson, NC Tarheel Association of Occupational Health Nurses [Ex. 14–3]; R. Paul Wilms, Director, Regulatory Affairs, NC Home Builders Association [Ex. 14–4]; Garry Moore, Director of Human Resources, Kentucky Derby Hosiery Co., Inc. [Ex. 14–5]; Douglas Brackett, Executive Vice President, American Furniture Manufacturers Association [Ex. 14–6]; Thomas F. Cecich, Vice President, Environmental Safety, GlaxoWellcome, Inc. [Ex. 14–7]; Dennis M. Julian, Executive Vice President, NC Textile Manufacturers Association, Inc. [Ex. 14–8]; W. B. Jenkins, President, NC Farm Bureau Federation [Ex. 14–9]; Robert W. Slocum, Jr., Executive Vice President, NC Forestry Association., Inc. [Ex. 14–10]; James E. McCauley, Director, Safety and Security, Perdue Farms Inc. [Ex. 14–11]; Judith S. Ostendorf, President, NC Tarheel Association of Occupational Health Nurses [Ex. 14–12]; Cheryl N. Kennedy, NC Costal Plains Association of Occupational Health Nurses [Ex. 14–13]; Ginger Lusk, President, NC Foothills Association of Occupational Health Nurses [Ex. 14–14]; Robin Lee, Vice President, Metrolina of NC Association of Occupational Health Nurses [Ex. 14–15]; Lisa Ramber, Manager, Safety and Health, American Textile Manufacturers Institute [Ex. 14–16]; Henry L. Schmulling, Jr., Manager, Corporate Safety and Industrial Hygiene, Duke Power Company [Ex. 14–17]; Timothy J. Pizatella, Acting Director, Division of

Safety Research, NIOSH [Ex. 14–18]; Belinda S. Worsham, Occupational Health Nurse Consultant [Ex. 14–20]; June H. Hoyle, Occupational Health Nurse Practitioner, City of High Point, NC [Ex. 14–21]; Patricia Dalton, Administrator/Occupational Health, Pitt County Memorial Hospital [Ex. 14–22]; Lynn H. Hollifield, President, Western NC Association of Occupational Health Nurses [Ex. 14–23]; Liza Gregg, RN, MSN, CIC, CPHQ, NC Association of Occupational Health Nurses [Ex. 14–24]; Connie Bandy, Vice President, NC Costal Plains AOHN [Ex. 14–25]; Bonnie Rogers, President, The American Association of Occupational Health Nurses, Inc. [Ex. 14–26]; and Doug E. Croft, President, Chamber of Commerce, Thomasville, North Carolina [Ex. 14–27].

Of the 26 written comments received, ten (10) expressed full unqualified support for final approval on the grounds of State competence, responsiveness, innovation and specific knowledge of local conditions. All of these comments indicated that the State has established and operates an effective safety and health program without adversarial relations with local industries and workers, and that the State has been effective in protecting employees in North Carolina. Specifically, the commenters commended the State program for, among other things: its growth over the last four years, doubling its enforcement and education staffs; offering a full range of educational and consultative programs to the regulated community to augment a more focused and efficient enforcement effort; a decline every year since 1992 in the overall occupational injury and illness rate in the State; and its establishment of an Ergonomics Resource Center in conjunction with North Carolina State University; its initiation of a series of partnerships with business and industry trade associations to address hazards in areas such as logging, home-building, bottling, and furniture.

Twelve (12) [Exhibits 14–3, 14–12, 14–13, 14–14, 14–15; 14–20; 14–21; 14–22; 14–23; 14- 24; 14–25; and 14–26] comments were received from North Carolina affiliates of the Association of Occupational Health Nurses recommending that the North Carolina program include occupational health nursing positions in its staffing benchmarks. As Deputy Commissioner Charles N. Jeffress noted in his responses [Ex. 14–19A–D; Ex. 14–28; and Ex. 14–29], this issue was also raised by the Association during OSHA's consideration of the State's proposal to revise its compliance staffing benchmark levels. However, benchmark staffing requirements apply solely to personnel engaged in the enforcement of standards and while an individual with an educational background in occupational health nursing would be eligible to apply for such compliance positions, it would be inappropriate to reserve staffing positions for individuals with a particular occupational health degree. However, Mr. Jeffress concurs that occupational health nurses can add value to an occupational safety and health program particularly in the areas of training and compliance assistance. An occupational nurse has served as a member of the North Carolina Occupational Safety and Health Advisory Council and one is on the staff of the North Carolina Ergonomics Resource Center joint program. Further, Mr. Jeffress indicates that they have relied on the expertise and advice of occupational health professionals in other departments with which they conduct cooperative efforts especially in the areas of worker health and reporting of occupational illnesses.

Four (4) commenters, Don Beussee, Director, Health and Safety Services, Burlington Industries, Inc. [Ex. 14–1]; Jim H. Conner, Executive Vice President, The American Yarn Spinners Association, Inc. [Ex. 14–2]; Dennis M. Julian, Executive Vice President, North Carolina Textile Manufacturers Association, Inc. [Ex. 14–8]; and Lisa Ramber, Manager, Safety and Health, American Textile Manufacturers Institute [Ex. 14–16], raise concerns about North Carolina's adoption of more stringent enforcement policies with regard to engineering controls for noise levels between 90 dBA and 100 dBA and full-shift use of respirators for cotton dust exposures in the textile industry. All suggest that these interpretations are inconsistent with Federal OSHA's standards interpretations and have not been demonstrated to comply with the ''product clause'' test of the Act that different State standards must be ''required by compelling local conditions and not cause an undue burden on interstate commerce.'' Mr. Julian and Mr. Beusse, nonetheless, support the granting of final approval while Ms. Ramber requests that the State be required to revise its policies prior to OSHA granting final approval. Charles Jeffress, Deputy Commissioner of Labor, responded individually to each of the comments on October 9, 1996, Burlington Industries, Inc. (Ex. 14–19); October 15, 1996, American Yarn Spinners Association, Inc. (Ex. 14–19A); October 17, 1996, North Carolina Textile Manufacturers Association, Inc. (Ex. 14–19B); and October 18, 1996, American Textile Manufacturers Institute (Ex. 14–19C).

North Carolina's standard for noise is identical to the Federal standard (29 CFR 1910.95). However, North Carolina requires employers to implement engineering controls, where feasible, when noise levels are between 90 dBA and 100 dBA. One commenter indicates that this policy ''* * * requires employers to spend significant resources to engineer incremental reductions in noise levels * * *'' while still requiring the use of hearing protection devices. (Federal OSHA policy allows employers to rely on an effective hearing conservation program in lieu of engineering controls for noise levels between 92 dBA and 100dBA when this is demonstrated to be more cost effective.) Mr. Jeffress indicates that North Carolina's policy is consistent with the Federal policy in effect in 1983 and retention of this policy is ''more protective'' with the State's emphasis being on ''solving the problem'' rather than relying on a ''difficult to administer'' hearing conservation program. He further notes that North Carolina requires only ''feasible'' engineering and administrative controls in these situations and accepts hearing conservation methods when it is the only technologically or economically feasible means to control employee overexposure to noise at these levels. A case contesting this policy, brought by one of the commenters, Burlington Industries, is currently before the North Carolina Occupational Safety and Health Review Board.

North Carolina's standard for cotton dust is also identical to the Federal standard (29 CFR 1910.1043). Federal OSHA's interpretation of this standard allows the partial-shift wearing of respiratory protection where engineering controls alone do not reduce each employee's eight-hour time-weighted exposure to below the permissible exposure limit (PEL). North Carolina requires that respirators be worn during the full shift when engineering controls alone have not reduced exposure to below the PEL in order to afford workers the ''greatest protection possible'' and in recognition of lung function recovery which occurs when workers are removed from dusty environments even for short periods of time. The commenters are particularly concerned that this policy is also applied to extended shifts of 12 hours where the eight-hour time weighted average has been engineered below the PEL. Mr. Jeffress responds that he met

with representatives of the various associations on this issue on March 27, 1995, and subsequently Commissioner of Labor Harry Payne agreed to reevaluate North Carolina's policy upon the submission by the industry of data, such as medical or spirometry data, which can be used to evaluate the comparative benefits of full-shift respirator usage versus partial shift. A second meeting occurred on April 17, 1996, with two industry representatives but no data on health effects has been made available and no research authorized. North Carolina reiterated its offer to reconsider its policy upon the submission of appropriate comparative data. OSHA also investigated a Complaint About State Program Administration (CASPA) on this issue in 1992 and found the State's policy to be acceptable. No further comments or objections were received with regard to that finding at that time.

The OSH Act and implementing regulations require that both State standards, and the State's interpretations of those standards, be ''at least as effective as'' corresponding Federal OSHA standards and interpretations. (Section 18(c)(2); 1902.37(b)(4.) The differences between State and Federal standards identified in these comments describe State standards interpretations which are more stringent than those of Federal OSHA. Therefore, by definition these interpretations meet the ''at least as effective'' criterion. The further issues as to whether these standards, as interpreted and administered by the State, are applicable to products moved or used in interstate commerce; impose an undue burden on commerce; and are justified by compelling local conditions are not yet ripe for review as both polices are still under active consideration within the State, i.e., the noise policy through on-going contested cases challenging the policy; the full-shift use of respirators through the State's offer to reconsider the policy through negotiation with the textile industry.

OSHA, therefore, does not believe that any of the concerns expressed are sufficient to warrant withholding of final approval of the North Carolina State Plan especially in light of on-going State administrative and adjudicatory procedures.

Findings and Conclusions

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the North Carolina State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period October 1, 1993 through June 30, 1996 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows:

(1) *Standards.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(I)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and, where applicable to a product, must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved North Carolina State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the September 13 notice, the North Carolina plan provides for the adoption of standards and amendments thereto which are, in most cases, identical to Federal standards. The State's laws and regulations, previously approved by OSHA and made a part of the record in this proceeding, include provisions addressing all of the structural requirements for State standards set out in 29 CFR part 1902.

In order to qualify for final State plan approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

As noted in the ''18(e) Evaluation Report'' and summarized in the September 13, 1996, Federal Register notice, North Carolina has adopted standards in a timely manner which are, in nearly all cases, identical to Federal standards. Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. North Carolina has generally adopted standards interpretations which are identical to the Federal but in few cases, e.g., noise and cotton dust standards, has adopted more protective, but nonetheless at least as effective interpretations. (See discussion above on Comments received from the textile industry on this issue.)

OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to State standards have occurred in North Carolina.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds that the North Carolina program in actual operation provides for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal Program.

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The North Carolina State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval, permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliances as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the September 13 notice, North Carolina received one request for a permanent variance during the reporting period. That request is currently under review by the State. No temporary variance request was received during the evaluation period and there are no outstanding issues on variances previously granted.

Accordingly, OSHA finds that the North Carolina program is able to

effectively grant variances from its occupational safety and health standards.

(3) *Enforcement.* Section 18(c)(2) of the Act and 29 CFR 1902.3(c)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The North Carolina occupational safety and health statutes and implementing regulations, previously approved by OSHA, establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The ''18(e) Evaluation Report'' indicates no signficiant lack of adherence to such procedures.

(a) Inspections. In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). Data contained in the 18(e) Evaluation Report noted that North Carolina targets establishments for programmed inspections based on industry injury/illness rates for safety and chemical exposure and violation experience for health. North Carolina has also implemented a cooperative compliance targeting program, known as the ''North Carolina 248'' program, which targets employers with the highest worker's compensation claim rates for a period of three years. North Carolina continues to conduct a higher percentage of all programmed inspections in the high-hazard industries in the State.

(b) Employee Notice and Participation in Inspections: State plans must provide for inspections in response to employee complaints and must provide for an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(i) through (iii)). North Carolina has procedures similar to Federal OSHA for processing and responding to complaints and providing for employee participation in State inspections. The data indicates that during the evaluation period the State responded to 85% of serious safety and health complaints within the prescribed time frame of 30 days. No complaints were classified as imminent danger during the review period. Employees participated in inspections in almost every case.

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)), and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, North Carolina requires that a poster approved by OSHA be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variances applications are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards which are, in most instances, identical to the Federal. Federal OSHA concluded that the State's performance is satisfactory.

(c) Nondiscrimination. A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). North Carolina General Statute 95–240 and State regulations provide for discrimination protection equivalent to that provided by Federal OSHA. Employees have up to 180 days to file a complaint, compared to the Federal 30 days. The State received a total of 66 complaints alleging discrimination during the evaluation period; 60 of the cases had been settled, withdrawn, dismissed, or filed for litigation by the end of the period. Federal OSHA concluded that the State's performance is satisfactory.

(d) Restraint of Imminent Danger; Protection of Trade Secrets. A State plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1902.4(c)(2)(vii)), and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and field operations manual which are similar to the Federal requirements. There were no imminent danger situations identified during the evaluation period. There were no Complaints About State Program Administration (CASPA's) filed concerning the protection of trade secrets during the report period.

(e) Right of Entry; Advance Notice. A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). In addition, a State is expected to prohibit advance notice of inspection, allowing exceptions thereto no broader than the Federal program (29 CFR 1902.3(f)). North Carolina General Statute 95–133 authorizes the Commissioner to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. The North Carolina statute also allows the Commissioner to apply for a warrant to permit entry into such establishments that have refused entry for the purpose of inspection or investigation. The North Carolina law allows the Commissioner to issue subpoenas ''to require the attendance and testimony of witnesses and the production of evidence under oath'' in regard to Divisional inspections and investigations. The North Carolina law also prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal procedures.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. North Carolina had 10 denials of entry, during the 18(e) evaluation period, and was successful in obtaining warrants for nine (90%) of them. North Carolina has adopted and implemented procedures for advance notice similar to the Federal procedures.

(f) Citations, Penalties, and Abatement. A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspections, for the purpose of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The North Carolina plan, through its law, regulations and field operations manual has established a system similar to the Federal program to provide for the prompt issuance of citations to

employers delineating violations and establishing reasonable abatement periods, requiring posting of such citations for employee information, and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first-instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure-to-abate notices and appropriate penalties (29 CFR 1902.37(b)(13)).

Procedures for the North Carolina occupational safety and health compliance program are set out in the North Carolina Field Operations Manual, which is patterned after the Federal manual. The State follows inspection procedures, including documentation procedures, which are similar to the Federal procedures. The 18(e) Evaluation Report notes overall adherence by North Carolina to these procedures. North Carolina cited an average of 5 violations per safety inspection and 3.9 violations per health inspection; and 30.7% of safety violations and 30.5% of health violations were cited as serious. The percentage of serious safety and health violations were lower than the comparable Federal percentages. The State continues to provide compliance officers with specific training and direction to ensure the proper classification of violations of standards. North Carolina's lapse time from the opening conference to issuance of citation averaged 36.7 days for safety and 57.9 days for health. Both of the lapse times compare favorably to Federal OSHA's lapse time.

North Carolina's procedures for calculation of penalties are similar to those of Federal OSHA. The 18(e) Evaluation Report noted that North Carolina proposes appropriate penalties. The average penalty for serious safety violations was $1,215.10 and the average serious health penalty was $1,056.30. North Carolina's abatement periods for serious violations averaged 15.5 days for safety and 6.8 days for health.

(g) Contested Cases. In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). North Carolina's procedures for employer and employee contest of citations, penalties and abatement requirements and for ensuring employees' rights are contained in the law, regulations and field operations manual made a part of the record in this proceeding. As noted elsewhere in this notice, the North Carolina plan provides for the review of contested cases by the independent North Carolina Occupational Safety and Health Review Board. State regulation and procedures provide a 20 working day period for informal conference which, if held, results in either a settlement agreement or a Notice of No Change which, in turn, may be contested to the Review Board within 15 working days. On average 4.6% of all inspections with citations are contested.

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). The North Carolina 18(e) Evaluation Report noted no instances of adverse adjudications.

(h) Enforcement Conclusion. In summary, the Assistant Secretary finds that enforcement operations provided under the North Carolina plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) Public Employee Program: Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan. The North Carolina plan provides a program in the public sector which is comparable to that in the private sector, including assessment of penalties. Injury and illness rates are lower in the public sector than in the private.

During the 18(e) Evaluation period, North Carolina conducted 136 public sector inspections. The proportion of inspections dedicated to the public sector (5% of total inspections) during the evaluation period was appropriate to the needs of public employees.

Because North Carolina's performance in the public sector is comparable to that in the private sector, OSHA concludes that the North Carolina program meets the criteria in 29 CFR 1902.3(j).

(5) Staffing and Resources. Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

The North Carolina plan provides for 64 safety compliance officers and 51 industrial hygienists as set forth in the North Carolina FY 1996 and FY 1997 grant applications. This staffing level meets the approved, revised ''fully effective'' benchmarks for North Carolina for health and safety staffing, as discussed elsewhere in this notice. At the close of the evaluation period the State had 60 safety and 47 health compliance officers positions filled.

North Carolina provides its safety and health personnel with formal training based on the needs of the staff and availability of funds. The OSHA Training Institute is utilized for staff training, and the State conducts quarterly conferences to train personnel in new and updated policy and technical changes.

Because North Carolina has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the court order in *AFL–CIO* v. *Marshall,* supra, are being met by the North Carolina plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The North Carolina plan was funded at $12,469,715 in FY 1996. ($3,131,400 (25%) of the funds were provided by Federal OSHA and $9,338,315 (75%) were provided by the State.)

As noted in the 18(e) Evaluation report, North Carolina's funding is judged sufficient in absolute terms; moreover, the State allocates its resources to the various aspects of the program in an effective manner. On this basis, OSHA finds that North Carolina has provided sufficient funding and

resources for the various activities carried out under the plan.

(6) Record and Reports: State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurance that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.4(1)).

North Carolina employer recordkeeping requirements are identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illness and Injuries as well as the OSHA Data Initiative. The State participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA.

For the foregoing reasons, the OSHA finds that North Carolina has met the requirements of sections 18(c) (7) and (8) of the Act on employer and State reports to the Secretary.

(7) Voluntary Compliance: A State plan is required to undertake programs to encourage voluntary compliance by employers and employees (29 CFR 1902.4(c)(2)(xiii)).

North Carolina, in the private sector, conducted 178 employer and employee training sessions with 3,117 employer attendees and 5,445 employee attendees at the sessions. The State, through a cooperative agreement with the North Carolina Community College System Small Business Centers, also participated in conducting 43 workshops covering several safety and health subjects.

The State has entered into a partnership with North Carolina State University to provide comprehensive ergonomic services to citizens and employers through the Ergonomics Resource Center. The Center has developed a comprehensive outreach program which includes education, research, on-site consultation, technology transfer and monitoring, on a fee basis. The Center was one of the semi-finalists in the 1996 Innovations in American Government Awards program.

North Carolina also has initiated a Cooperative Assessment Program for ergonomics which encourages employers who are being inspected to voluntarily address ergonomic problems through an agreement similar to a post-citation settlement agreement. The State has also entered into a Memorandum of Understanding with the State Department of Agriculture, Meat and Poultry Inspection Services to train MPIS inspectors to recognize and address workplace hazards.

In addition, on-site consultation services are provided in the public sector under the plan. In the private sector on-site consultation services are provided to employers under a cooperative agreement with OSHA under section 7(c)(1) of the Act and 29 CFR Part 1908.

Accordingly, OSHA finds that North Carolina has established and is administering an effective voluntary compliance program.

(8) Injury/Illness Rates: As a factor of its section 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those under the Federal program. See § 1902.37(b)(15). In 1994, the private sector lost workday case rate for all industries remained at 3.5 as it has been since 1989. There were slight increases in manufacturing, from 4.0 in 1993 to 4.1 in 1994, and in construction, from 4.7 in 1993 to 5.1 in 1994, but both areas were still below the nationwide rate of 3.8 for all industries, 5.5 for manufacturing, and 5.5 for construction.

OSHA finds that during the evaluation period trends in worker injury and illness in North Carolina were comparable with those in States with Federal enforcement; actual injury and illness rates within the State were lower.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present Federal Register document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that the North Carolina State plan for occupational safety and health, which has been monitored for at least one year subsequent to certification, is in actual operation at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Therefore, the North Carolina State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR part 1902, effective December 10, 1996.

Under this 18(e) determination, North Carolina will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State-initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, North Carolina must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State compliance staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the North Carolina plan terminates OSHA authority for Federal enforcement of its standards in North Carolina, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination ''the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, shall not apply with respect to any occupational safety and health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.''

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a)(2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal OSH Act (section 17) is relinquished as of the effective date of this determination.

Federal authority under provisions of the Act not listed in section 18(e) is unaffected by this determination. Thus, for example, the Assistant Secretary

retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination would remain under Federal jurisdiction. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the North Carolina plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health coverage of private sector maritime activities (occupational safety and health standards comparable to 29 CFR parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry standards (29 CFR part 1910) appropriate to hazards found in these employments); employment on Indian reservations, enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government, railroad employment, and enforcement on military bases. In addition Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons which OSHA determines are not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has subsequently failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary is required to initiate proceeding to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47, *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to part 1952 reflecting the final approval decision. This notice makes changes to subpart I of part 1952 to reflect the final approval of the North Carolina plan.

The table of contents for part 1952, subpart I, has been revised to reflect the following changes:

The heading of section 1952.152, Completion of developmental steps, has been revised by adding the words ''and certification'' at the end.

A new section 1952.154, Final approval determination, which formerly was reserved, has been added to reflect the determination granting final approval of the plan. This section contains a more accurate description of the current scope of the plan than the one contained in the initial approval decision.

Section 1952.155, Level of Federal enforcement, has been revised to reflect the State's 18(e) status. This replaces the former description of the relationship of State and Federal enforcement under an Operational Status agreement voluntarily suspending Federal enforcement authority, which was entered into on February 20, 1975. (Federal enforcement jurisdiction was partially reinstituted on October 24, 1991, and again fully suspended on March 7, 1995.) Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for North Carolina. Section 1952.155 describes the issues over which Federal authority has been terminated and the issues for which it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present Federal Register notice.

Section 1952.156, Where the plan may be inspected, has been revised to reflect a new room number N3700 for the Office of State Programs, Directorate of Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210; and a new street address 319 Chapanoke Road—Suite 105 for the North Carolina Department of Labor, Division of Occupational Safety and Health, Raleigh, North Carolina 27603–3432.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in North Carolina under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 1–90 (55 FR 9033)).

Signed at Washington, DC, this 10th day of December 1996.

Joseph A. Dear,

Assistant Secretary.

Part 1952 of 29 CFR is hereby amended as follows:

PART 1952—[AMENDED]

1. The authority citation for part 1952 continues to read as follows:

Authority: Section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. The table of contents for part 1952, subpart I is revised to read as follows.

Subpart I—North Carolina

Sec.
1952.150 Description of the plan as initially approved.
1952.151 Developmental schedule.
1952.152 Completion of developmental steps and certification.
1952.153 Compliance staffing benchmarks.

1952.154 Final approval determination.
1952.155 Level of Federal enforcement.
1952.156 Where the plan may be inspected.
1952.157 Changes to approved plan.

§ 1952.152 [Amended]

3. The heading of § 1952.152 is revised to read ''Completion of developmental steps and certification.''

4. A new § 1952.154 is added, and §§ 1952.155 and 1952.156 are revised to read as follows:

§ 1952.154 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after determination that the State met the ''fully effective'' compliance staffing benchmarks as revised in 1984 and 1996 in response to a court order in *AFL–CIO* versus *Marshall, 570 F.2d 1030 (D.C. Cir. 1978),* and was satisfactorily providing reports to OSHA through participation in the Federal-State Integrated Management Information System, the Assistant Secretary evaluated actual operations under the North Carolina State plan for a period of at least one year following certification of completion of developmental steps (41 FR 43896). Based on the Biennial Evaluation Report covering the period of October 1, 1993 through September 30, 1995, an 18(e) Evaluation Report covering the period October 1, 1995 through June 30, 1996, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of North Carolina's occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the North Carolina plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective December 10, 1996.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in North Carolina. The plan does not cover Federal government employers and employees; private sector maritime activities; employment on Indian reservations; enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government, railroad employment, and enforcement on military bases.

(c) North Carolina is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

§ 1952.155 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the North Carolina State plan under section 18(e) of the Act, effective December 10, 1996, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the North Carolina Plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under section 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal OSH Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the North Carolina plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to private sector maritime activities (occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments); employment on Indian reservations; enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government; railroad employment; and enforcement on military bases. Federal jurisdiction is also retained with respect to Federal government employers and employees.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons which OSHA determines are not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the State plan which has received final approval, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In any of the aforementioned circumstances, Federal enforcement authority may be exercised after consultation with the State designated agency.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the North Carolina State plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the North Carolina State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final approval determination under Section 18(e),

resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

§ 1952.156 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Directorate of Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1375 Peachtree Street, NE, Suite 587, Atlanta, Georgia 30367; and

North Carolina Department of Labor, Division of Occupational Safety and Health, 319 Chapanoke Road—Suite 105, Raleigh, North Carolina 27603–3432.

[FR Doc. 96–32083 Filed 12–17–96; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID5–2–7075a; FRL–5665–1]

Clean Air Act Promulgation of Reclassification of PM–10 Nonattainment Areas in Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action identifies those nonattainment areas in the State of Idaho which have failed to attain the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to ten micrometers (PM–10) by the applicable attainment date of December 31, 1995. This action also grants a second one-year extension to the attainment date for the Power-Bannock Counties PM–10 nonattainment in Idaho.

DATES: This action is effective on February 18, 1997, unless adverse or critical comments are received by January 17, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Montel Livingston, SIP Manager, EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle Washington, 98101. Copies of the documents relevant to this action are available for public inspection during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements Concerning Designation and Classification

Areas meeting the requirements of section 107(d)(4)(B) of the Act [1] were designated nonattainment for PM–10 by operation of law and classified ''moderate'' upon enactment of the 1990 Clean Air Act Amendments. *See generally*, 42 U.S.C. section 7407(d)(4)(B). These areas included all former Group I PM–10 planning areas identified in 52 FR 29383 (August 7, 1987) as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the National Ambient Air Quality Standards (NAAQS) for PM–10 prior to January 1, 1989.[2] A Federal Register notice announcing the areas designated nonattainment for PM–10 upon enactment of the 1990 Amendments, known as ''initial'' PM–10 nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent Federal Register notice correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654). *See* 56 FR 56694 (November 6, 1991) and 40 CFR 81.313 (codified air quality designations and classifications for the State of Idaho). All initial moderate PM–10 nonattainment areas had the same applicable attainment date of December 31, 1994. Section 188(d) provides the Administrator the authority to grant two one-year extensions to the attainment date provided certain requirements are met as described below.

States containing initial moderate PM–10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a SIP revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM–10 NAAQS by the December 31, 1994 attainment date was practicable. *See* section 189(a).

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law 101–549, 104 Stat. 2399. References herein are to the Clean Air Act as amended (''Act'' or ''CAA''), which is codified at 42 U.S.C. 7401 *et seq.*

[2] Many of these other areas were identified in footnote 4 of the October 31, 1990 Federal Register notice.

B. Attainment Determinations

All PM–10 nonattainment areas are initially classified ''moderate'' by operation of law when they are designated nonattainment. *See* section 188(a). Pursuant to sections 179(c) and 188(b)(2) of the Act, EPA has the responsibility of determining within six months of the applicable attainment date whether PM–10 nonattainment areas have attained the NAAQS. Determinations under section 179(c)(1) of the Act are to be based upon an area's ''air quality as of the attainment date.'' Section 188(b)(2) is consistent with this requirement. Generally, EPA will determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established State and Local Monitoring Stations (SLAMS) in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined by EPA to meet federal monitoring requirements (see 40 CFR 50.6 and appendix J, 40 CFR part 53, 40 CFR part 58 appendix A & B) and may be used to determine attainment status of areas. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided that it meets the federal monitoring requirements for SLAMS. All data will be reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration over a three year period (for example, 1993, 1994, 1995 for areas with a December 31, 1995 attainment date) is equal to or less than 50 micrograms per cubic meter (ug/m3). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m3. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m3 (averaged over a three year period) is less than or equal to one (1.0). Three consecutive years of air quality data is generally necessary to show attainment of the 24-hour and annual standard for PM–10. *See* 40 CFR part 50 and appendix K.

C. Reclassification to Serious

A PM–10 nonattainment area may be reclassified to ''serious,'' which requires new air quality planning obligations, in one of two ways. First, EPA has general discretion to reclassify a moderate PM–10 area to serious if at any time EPA

determines the area cannot practicably attain the PM–10 standard by the applicable attainment date. *See* section 188(b)(1). EPA bases its decisions to reclassify an area as serious before the attainment date on special facts or circumstances related to the affected nonattainment area which demonstrate that the area cannot practicably attain the standard by the applicable attainment date.

Second, under section 188(b)(2) of the Act, a moderate area will be reclassified as serious by operation of law if EPA finds that the area is not in attainment by the applicable attainment date. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a Federal Register notice within six months after the applicable attainment date identifying those areas which have failed to attain the standard and are reclassified to serious by operation of law. *See* section 188(b)(2); *see also* section 179(c)(1).

D. Extension of the Attainment Date

The Act provides the Administrator the discretion of granting a one-year extension to the attainment date for a moderate PM–10 nonattainment area provided certain criteria are met. *See* section 188(d). If an area does not have the necessary number of consecutive years of clean data to show attainment of the NAAQS, a State may apply for up to two one-year extensions of the attainment date for such area. The statute sets forth two criteria a moderate nonattainment area must satisfy in order to obtain an extension: (1) The State has complied with all the requirements and commitments pertaining to the area in the applicable implementation plan; and (2) the area has no more than one exceedance of the 24-hour PM–10 standard in the year preceding the extension year, and the annual mean concentration of PM–10 in the area for the year preceding the extension year is less than or equal to the standard. *See* section 188(d).

The authority delegated to the Administrator to extend attainment dates for moderate PM–10 nonattainment areas is discretionary. Section 188(d) of the Act provides that the Administrator ''may'' extend the attainment date for areas that meet the minimum requirements specified above. The provision does not dictate or compel that EPA grant extensions to such areas.

In exercising this discretionary authority for PM–10 nonattainment areas, EPA will examine the air quality planning progress made in the moderate area. EPA will be disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate PM–10 nonattainment area planning obligations. In order to determine whether the State has substantially met these planning requirements the EPA will review the States application for the attainment date extension to determine whether the State has: (1) Adopted and substantially implemented control measures that represent RACM/RACT in the moderate nonattainment area; and (2) demonstrated that the area has made emission reductions amounting to reasonable further progress (RFP) toward attainment of the PM–10 NAAQS as defined in section 171(1) of the Act. RFP for PM–10 nonattainment areas is defined in section 171(1) of the Act as annual incremental emission reductions to ensure attainment of the applicable NAAQS (PM–10) by the applicable attainment date.

If the State does not have the requisite number of years of clean air quality data to show attainment and does not apply or qualify for an attainment date extension, the area will be reclassified to serious by operation of law under section 188(b)(2) of the Act. If an extension to the attainment date is granted, at the end of the extension year EPA will again determine whether the area has attained the PM–10 NAAQS. If the requisite three consecutive years of clean air quality data needed to determine attainment are not met for the area, the State may apply for a second one-year extension of the attainment date. In order to qualify for the second one-year extension of the attainment date, the State must satisfy the same requirements listed above for the first extension. EPA will also consider the State's PM–10 planning progress for the area in the year for which the first extension was granted. If a second extension is granted and the area does not have the requisite three consecutive years of clean air quality data needed to demonstrate attainment at the end of the second extension, no further extensions of the attainment date can be granted and the area will be reclassified serious by operation of law. *See* section 188(d).

II. Summary of Today's Action

In today's action, EPA is announcing its determination that the Power-Bannock Counties PM–10 nonattainment area has failed to attain the PM–10 NAAQS by the applicable attainment date of December 31, 1995. As discussed below, this determination is based upon air quality data which has revealed violations of the PM–10 NAAQS during the period from 1993 to 1995.

This action also serves to announce that the State of Idaho has requested a second one-year extension to the PM–10 attainment date for the Power-Bannock Counties PM–10 nonattainment area. EPA has reviewed the extension request and is, with this notice, granting the second one-year extension of the attainment date for the Power-Bannock Counties nonattainment area. As discussed below, this determination is based upon available air quality data and a review of the State's continuing progress in implementing the planning requirements that apply to moderate PM–10 nonattainment areas.

A. Power-Bannock Counties PM–10 Nonattainment Area

The Power-Bannock Counties PM–10 nonattainment area is comprised of State lands within portions of both Power and Bannock Counties and both trust and fee lands within a portion of the exterior boundaries of the Fort Hall Indian Reservation. The State of Idaho operates four PM–10 SLAMS monitoring sites in the Power-Bannock Counties PM–10 nonattainment area, all of which are on State lands. Data from these State sites have been deemed valid by EPA and have been submitted by the State of Idaho to be included in the AIRS operated by EPA. The Shoshone-Bannock Tribes established a monitoring station in February 1995, but validated data is not available at this time.

On May 6, 1996 EPA granted a one year extension to the attainment date for the Power-Bannock Counties PM–10 nonattainment area based on a request by the State of Idaho (61 FR 20730, May 6, 1996). The applicable attainment date for the Power-Bannock Counties PM–10 nonattainment area is, therefore, December 31, 1995.

1. Air Quality Data

Whether an area has attained the PM–10 NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. *See* 40 CFR part 50 and appendix K. For areas with an attainment date of December 31, 1995, this three year period covers calendar years 1993, 1994 and 1995. Data from calendar year 1995 is also used in determining whether an area, with a December 31, 1995 attainment date, meets the air quality criteria for granting a second one-year extension to the attainment date under section 188(d).

A review of the data reported for these SLAMS sites for the calendar years 1993, 1994 and 1995 shows no violations of the annual PM–10 standard at any of the SLAMS sites in the Power-

Bannock Counties PM–10 nonattainment area. A violation of the 24-hour NAAQS was recorded at two monitoring sites on January 7, 1993. As a result of the one-in-every six day sampling frequency at each of these sites, the expected exceedance for the 1993 calendar year at the SLAMS sites is 6.0. No measured values above the level of the 24-hour NAAQS were reported in 1994 or 1995. Therefore, the three year average (1993, 1994, 1995) expected exceedance rate at the SLAMS sites is 2.0.

Private industry in the Power-Bannock Counties PM–10 nonattainment area funded and operated a seven station monitoring network in a portion of the nonattainment. The monitoring stations were located to measure maximum impacts from the phosphate industry and were located adjacent to the ''industrial complex''. Several monitoring sites were also established to assess population exposure and background concentrations. This network collected PM–10 air quality data for one year, from October 1, 1993 through September 30, 1994.

Data from this special purpose network has been submitted to EPA to support the air pathways risk assessment for the Eastern Michaud Flats (EMF) Superfund site. All of the EMF superfund monitoring sites are located within the Power-Bannock Counties PM–10 nonattainment area.

Data from this special purpose monitoring network have been reviewed by EPA for compliance with federal monitoring requirements and for reported PM–10 levels. The data are valid. There were no reported 24-hour concentrations above the level of the 24-hour NAAQS during the year the network was in operation. One of the sites in the network, EMF Site #2, is located at the site predicted to have the maximum industrial air quality impact. This maximum impact site was determined from the dispersion modeling conducted to support the State, EPA and Tribal Clean Air Act PM–10 planning efforts. This site is located immediately adjacent to the industrial complex on State lands, but less than 300 feet from the Reservation boundary. Data from EMF Site #2 reported an annual concentration greater than the 50 μg/m3 level of the annual NAAQS for the one year period the network was in operation. In addition, several reported PM–10 concentrations at EMF Site #2 are at or near the level of the 24-hour PM–10 NAAQS, although the standard was not, in fact exceeded.

2. Attainment of the PM–10 NAAQS

The Power-Bannock Counties PM–10 nonattainment area does not meet the 24 hour PM–10 NAAQS. The PM–10 concentrations reported at two SLAMS monitoring stations on January 7, 1993, exceeded the level of the 24-hour NAAQS. Because of the sampling frequency (one in every six days), the expected exceedance rate for the three year period from 1993 through 1995 is 2.0, which represents a violation of the 24-hour NAAQS. Therefore, the Power-Bannock Counties PM–10 nonattainment area does not attain the PM–10 NAAQS.

3. Extension of Attainment Date

As discussed above, the CAA authorizes the Administrator to grant a second one-year extension of the attainment date for moderate PM–10 nonattainment areas, provided the State demonstrates it has complied with all requirements and commitments pertaining to the affected area in the applicable implementation plan and the area had no more than one measured exceedance of the 24-hour NAAQS (150 μg/m3) in the year preceding the extension year, and the annual mean concentration of PM–10 in the year preceding the extension year is less than or equal to annual NAAQS (50 μg/m3). *See* section 188(d). For the reasons discussed below, EPA is granting the State's request for a second one-year extension to the attainment date, from December 31, 1995 to December 31, 1996, for the Power-Bannock Counties PM–10 nonattainment area.

a. Compliance with Applicable SIP. Based on information available to EPA, EPA believes that the State of Idaho is in compliance with all requirements and commitments in the applicable implementation plan that pertain to the Power-Bannock Counties PM–10 nonattainment area. EPA provides oversight of the Idaho air program, including implementation of the Idaho State Implementation Plan (SIP). EPA conducts annual oversight inspections of sources throughout the State of Idaho. Results from these inspections indicate that the State is meeting the requirements and commitments of the statewide SIP.

Although the State has submitted its moderate PM–10 nonattainment plan for the Power-Bannock Counties nonattainment area as a SIP revision, EPA has not yet taken action on that plan. Therefore, this plan is not yet an ''applicable implementation plan'' for the Power-Bannock Counties PM–10 nonattainment area.

b. Air Quality Data. As discussed above, there were no measured levels above the 24-hour NAAQS at any of the SLAMS monitoring sites or any of the EMF monitoring sites during calendar year 1995. In addition, the annual mean concentration of PM–10 at each of the SLAMs monitoring sites during calendar year 1995 was below the level of the annual NAAQS.

As also discussed above, however, EMF Site #2 recorded an annual average of 55.7 μg/m[3] for the one year period from October 1, 1993 to September 30, 1994. EPA believes that the recorded PM–10 levels at several stations in the EMF monitoring network, particularly EMF Site #2, indicate that air quality problems continue in the Power-Bannock Counties PM–10 nonattainment area and that additional controls will likely be necessary to bring the area into attainment. As EPA discussed at length in granting the first extension, however, EPA does not believe that the data recorded at EMF Site #2 during the period from October 1, 1993 to September 30, 1994, precluded EPA from granting the State's request for the first one-year extension of the attainment date under section 188(d) of the Act. For the same reasons, EPA believes that the data from EMF Site #2 does not preclude EPA from granting the second one-year extension to the attainment date.

c. Substantial Implementation of Control Measures. The State of Idaho, along with several local agencies, has developed and implemented several significant control measures on sources located on State lands within the Power-Bannock Counties PM–10 nonattainment area during calendar year 1993. The State submitted these control measures to EPA as a SIP revision in May and December 1993. These measures consist of a comprehensive residential wood combustion program, including a mandatory woodstove curtailment program; stringent controls on fugitive road dust, including controls on winter road sanding controls and a limited unpaved road paving program; and a revised operating permit that represents reasonably available control technology (RACT) for the J.R. Simplot facility, the only major stationary source of particulate matter under the regulatory jurisdiction of the State in the nonattainment area.[3] EPA has conducted a preliminary review of these

[3] On June 12, 1996, EPA published a Federal Register notice that corrected the boundary of the Power-Bannock Counties PM–10 nonattainment area and removed a small area that included the City of Inkom and the Ash Grove Cement facility from the Power-Bannock Counties PM–10 nonattainment area (see 61 FR 29667).

measures and believe that they substantially meet EPA's guidance for RACM, including RACT, for sources of primary particulate for the purposes of granting the extension under section 188(d).

After the State submitted its moderate area SIP in May of 1993, the State learned that PM–10 precursors contribute significantly to wintertime violations of the PM–10 standard under certain meteorological conditions. In cooperation with the Tribes and EPA, the State developed a work plan for developing an emission inventory of sources of PM–10 precursors in the nonattainment area and controls for such sources. The State is moving forward on this precursor plan and expects to have controls in place on major stationary sources for PM–10 precursors by December 1998. EPA believes that the State's schedule for addressing the contribution of precursors is expeditious and that the State is making progress on the workplan. Because the contribution of precursors came to light only late in the planning process, EPA does not believe that the State's failure to have actually implemented controls on sources of PM–10 precursors on State lands within the nonattainment area is grounds, in and of itself, for denying the State's request for a one-year extension.

With respect to PM–10 sources located on Tribal lands within the nonattainment area, a gap in planning responsibilities for these sources exists. In developing its control strategy, the State did not seek to impose controls on any sources located within the Reservation portion of the nonattainment area or attempt to demonstrate to EPA that it had the authority to issue and enforce such controls on Reservation sources. As EPA has previously stated, EPA does not believe a Clean Air Act program submitted by the State should be disapproved because it fails to address air resources within the exterior boundary of an Indian Reservation. *See* 59 FR 43556, 43982 (August 25, 1994) (proposed rule implementing section 301(d)).

Nor does EPA currently have the authority to recognize as Federally enforceable controls that the Shoshone-Bannock Tribes have imposed or could impose on PM–10 sources located on Reservation lands within the nonattainment area. Although the Clean Air Act Amendments of 1990 greatly expanded the role of Indian Tribes in implementing the provisions of the Clean Air Act on Reservation lands, EPA has not yet issued the final rules necessary for EPA to recognize Tribal air programs as Federally enforceable. *See* section 301(d); 59 FR 43956.

EPA is currently working on a proposed rule imposing controls on sources of PM–10 on the Tribal portion of the nonattainment area. EPA believes that it would be unfair to burden the State and the Pocatello area with new serious area planning requirements because of the gap in planning responsibilities and the resulting in the lack of Federally enforceable controls at this time on sources located on the Reservation. Accordingly EPA believes that the State has adequately demonstrated, for proposes of an extension under section 188(d) of the Act, that it has adopted and substantially implemented control measures representing RACT/RACM in the nonattainment area.

d. Emission Reduction Progress. On March 30, 1995, the State of Idaho submitted to EPA the milestone report as required by section 189(c)(2) of the Act to demonstrate annual incremental emission reductions and reasonable further progress. In that report, the State discusses implementation of control measures adopted as part of the control strategy in the SIP. As stated above, the control strategy in the State's moderate area SIP consists of a wood smoke control program with a mandatory wood smoke curtailment element, aggressive control requirements to reduce emissions associated with winter road sanding, and a new operating permit for the major source located on State lands that establishes RACT for this source.

The effect of these control measures on air quality can be seen in reported ambient measurements at the SLAMS monitoring sites, most of which have been operating for more than seven years. Data from these sites show no violations of either the annual or the 24-hour standard since 1992 attributable to primary particulate. This is further evidence that the State's implementation of control measures on sources of primary particulate on State lands has resulted in emission reductions amounting to reasonable further progress in the Power-Bannock Counties PM–10 nonattainment area.

In summary, EPA is granting the State's request for a second one-year extension of the attainment date, from December 31, 1995 to December 31, 1996, for the Power-Bannock Counties PM–10 nonattainment area.

III. Implications of This Action

Upon the effective date of this action, the attainment date for the Power-Bannock Counties PM–10 nonattainment area will be December 31, 1996. The area will thus remain a moderate PM–10 nonattainment area and avoid the additional planning requirements that apply to serious PM–10 nonattaniment areas. No further extensions to the attainment date are available. Should the area experience a violation of the PM–10 NAAQS in calendar year 1996, the area will not have attained the standard by the attainment date and the area will be reclassified to serious by operation of law.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing this extension to the attainment date should adverse or critical comments be filed. This action will be effective February 18, 1997 unless by January 17, 1997 adverse or critical comments are received.

If EPA receives such comments, this action will be with drawn before the effective date by publishing a subsequent document that will withdraw the final action. Any parties interested in commenting on this action should do so at this time. If no such comments are received the public is advised this action will be effective February 18, 1997.

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603

and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Determinations of nonattainment areas under section 188(b)(2) of the CAA and extensions under Section 188(d) of the Act do not create any new requirements. Therefore, because these actions do not impose any new requirements, I certify that it does not have a significant impact on small entities.

C. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register.

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 1997. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2), 42 U.S.C. 7607(1b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations.

Dated: December 5, 1996.

Chuck Clarke,

Regional Administrator.

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

PART 52 [AMENDED]

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

Authority: 52 U.S.C. 7401–7671q.

Subpart N—Idaho

2. Section 52.691 is amended by designating the existing paragraph as ''(a)'' and adding paragraph (b) to read as follows:

52.691 Extensions.

* * * * *

(b) The Administrator, by authority delegated under section 188(d) of the Clean Air Act, as amended in 1990, hereby grants a second one-year extension (until December 31, 1996) to the attainment date for the Power-Bannock Counties PM–10 nonattainment area.

[FR Doc. 96–32054 Filed 12–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[Region II Docket No. 144, NJ22–1–7069(c); FRL–5665–3]

Approval and Promulgation of Implementation Plans; New Jersey; Withdrawal of Direct Final Rule Regarding Transportation Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; withdrawal.

SUMMARY: On October 15, 1996, EPA published direct final approvals of State Implementation Plan (SIP) revisions submitted by New Jersey (61 FR 53692 and 61 FR 53624). These SIP revisions incorporate transportation control measures (TCMs) as part of the State's effort to attain the national ambient air quality standard for ozone and demonstrate that emissions from growth in vehicle miles traveled will not increase motor vehicle emissions and, therefore, offsetting measures are not necessary. This action was published without prior proposal because EPA anticipated no adverse comments. Because New Jersey submitted adverse comments requesting withdrawal of EPA's document, EPA is withdrawing direct final approval of New Jersey's request to revise the SIP, announced on October 15, 1996.

EFFECTIVE DATE: This action is effective December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866, (212) 637–3895 or cairns.matthew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On October 15, 1996, EPA published direct final approval of revisions to New Jersey's SIP for ozone submitted by New Jersey on November 15, 1992 and November 15, 1993 (61 FR 53624). The intended effects of this action were to incorporate TCMs as part of New Jersey's effort to attain the national ambient air quality standard for ozone and to demonstrate that emissions from growth in vehicle miles traveled will not increase motor vehicle emissions and, therefore, offsetting measures are not necessary. EPA published this direct final rulemaking without prior proposal because the Agency viewed the revisions as noncontroversial and anticipated no adverse comments. The direct final rule was published in the Federal Register with a provision for a 30-day comment period.

EPA announced that the direct final rule would be withdrawn in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the Federal Register (61 FR 53692). EPA received adverse comments from the State of New Jersey: New Jersey indicated it was in the process of amending both the list of TCMs and its calculations for determining whether growth in vehicle miles traveled causes growth in motor vehicle emissions. EPA expects New Jersey to submit these changes shortly as part of its revised 15

Percent Rate of Progress Plan. Therefore, at New Jersey's request, EPA is withdrawing the direct final approval of New Jersey's TCMs and demonstration that emissions from growth in vehicle miles traveled will not increase motor vehicle emissions. EPA will publish a new proposal when New Jersey resubmits the list and calulations.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen Oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 5, 1996.

William J. Muszynski,

Deputy Regional Administrator.

For the reasons set out in the preamble, 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

§ 52.1582 [Amended]

2. Section 52.1582 is amended by removing paragraphs (e) and (f).

[FR Doc. 96–32056 Filed 12–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI48–02–7254; FRL–5662–5]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule approves a revision to the Michigan State Implementation Plan (SIP) to meet the requirements of the Environmental Protection Agency (EPA) general conformity rule set forth at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. This general conformity SIP revision will enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment and maintenance areas at the State and local level.

This approval is limited only to the general conformity SIP revision submitted pursuant to 40 CFR part 51, subpart W. SIP revisions submitted under 40 CFR part 51, subpart T, relating to conformity of Federal transportation actions funded or approved under Title 23 U.S.C. or the Federal Transit Act, will be addressed in a separate document.

EFFECTIVE DATE: This rule will be effective February 18, 1997.

ADDRESSES: Copies of the SIP revision, public comments and USEPA's responses are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location:

Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section 2 (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background

Section 176(c) of the Clean Air Act (Act), 42 USC 7506(c), provides that no Federal department, agency, or instrumentality shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a SIP which has been approved or promulgated pursuant to the Act. Pursuant to section 176(c)(1) of the Act, conformity means conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

Section 176(c)(4)(A) of the Act requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions to applicable SIPs. Criteria and procedures for determining conformity of Federal actions related to transportation projects funded or approved under Title 23 U.S.C. or the Federal Transit Act are set forth at 40 CFR part 51, subpart T. The criteria and procedures for determining conformity of other Federal actions, the ''general conformity'' rules, were published in the November 30, 1993, Federal Register and codified at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the EPA not later than November 30, 1994.

II. Evaluation of the State's Submittal

Pursuant to the requirements under Section 176(c)(4)(C) of the Act, the Michigan Department of Environmental Quality (MDEQ) submitted a SIP revision to EPA on November 29, 1994. The EPA found the submittal to be complete on April 13, 1995. In its submittal, the State adopted the EPA general conformity rule (40 CFR part 93 subpart B) verbatim. On February 2, 1996, EPA simultaneously published a direct final rule and a proposed rule in which EPA published its decision to approve the Michigan SIP revision. These rules were subject to a 30 day public comment period during which the EPA received one adverse comment. For this reason, the EPA withdrew the direct final rule on March 25, 1996.

General conformity is required for all areas which are designated nonattainment or maintenance for any NAAQS criteria pollutant. The State of Michigan currently has four areas designated ozone nonattainment; Allegan County, Flint Metropolitan Statistical Area (MSA)(Genesee County), Muskegon MSA (Muskegon County), Saginaw-Bay City-Midland (Bay, Midland, and Saginaw Counties), and two ozone maintenance areas; Detroit-Ann Arbor Consolidated MSA area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties which are ozone maintenance),Grand Rapids MSA (Kent and Ottawa Counties). Portions of three counties (Wayne, Oakland, and Macomb) are designated carbon monoxide nonattainment. A portion of Wayne County is maintenance for Particulate Matter-10. The State of Michigan is currently attaining the NAAQS for Nitrogen Dioxide and Sulfur Dioxide, and has not been designated nonattainment for lead.

III. Public Comments

Comment: The commentor contends that Michigan's submission fails to permit meaningful public scrutiny of general conformity determinations in that the Michigan Environmental Protection Act (MEPA), one of the mechanisms upon which the state will rely to enforce the conformity regulations, does not allow the public to compel compliance with general conformity procedures. Specifically, the commentor complains that under MEPA citizen review of inadequate or nonexistent general conformity determinations is limited to actions for declaratory and equitable relief before a circuit court and that such actions will involve protracted delays and expense thus discouraging public participation.

Response: Section 110(a)(2) of the Act requires that all SIP measures be enforceable and that the States have adequate authority under local law to implement them. The MDEQ, in consultation with the Michigan Attorney General, determined that MEPA, in conjunction with certain provisions of the Michigan State Air Pollution Act, providese ample authority to enforce these SIP provisions. ''Additional'' authority is provided by MEPA which authorizes a citizen or entity to bring a civil action for declaratory and equitable relief with respect to general conformity compliance violations.

Provisions requiring the opportunity for public participation are found in the general conformity rule itself (see 40 CFR 93.156). Any citizen may request information regarding a specific Federal action. The Federal agency must make available for review the conformity determination and the supporting documentation used to make the determination, must afford the public opportunity to comment upon such conformity determination, must respond to such comments, must make such responses available upon request, and must make public its final conformity determination.

IV. EPA Action

The EPA is approving the general transportation conformity SIP revision for the State of Michigan. The EPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal general conformity rules set forth at 40 CFR part 93, subpart B. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision.

V. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 21, 1996.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C 7401–7671q.

Subpart X—Michigan

2. Section 52.1173 is amended by adding paragraph (g) to read as follows:

§ 52.1173 Control strategy: Particulates.

* * * * *

(g) Approval—On November 29, 1994, the Michigan Department of Natural Resources submitted a revision to the particulate State Implementation Plan for general conformity rules. The general conformity SIP revisions enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

3. Section 52.1174 is amended by adding paragraph (n) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(n) Approval—On November 29, 1994, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan for general conformity rules. The general conformity SIP revisions enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

* * * * *

4. Section 52.1185 is amended by adding paragraph (b) to read as follows:

§ 52.1185 Control strategy: Carbon Monoxide.

* * * * *

(b) Approval—On November 29, 1994, the Michigan Department of Natural Resources submitted a revision to the carbon monoxide State Implementation Plan for general conformity rules. The general conformity SIP revisions enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

* * * * *

[FR Doc. 96–32057 Filed 12–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI40–02–7255; FRL–5662–8]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule approves a revision to the Michigan State Implementation Plan (SIP) to meet the requirements of the Environmental Protection Agency (EPA) transportation conformity rule set forth at 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The transportation conformity SIP revision will enable the State of Michigan to implement and enforce the Federal transportation conformity requirements at the State or local level. This approval is limited only to 40 CFR part 51, subpart T (transportation conformity). SIP revisions submitted under 40 CFR part 51, subpart W, relating to conformity of general Federal actions, will be addressed in a separate EPA document.

EFFECTIVE DATE: This rule will be effective February 18, 1997.

ADDRESSES: Copies of the SIP revision, public comments and EPA's responses are available for inspection at the following address:

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location:

Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section 2 (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background

Section 176(c) of the Clean Air Act (Act), 42 U.S.C. 7506(c), provides that no Federal department, agency, or instrumentality shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a SIP which has been approved or promulgated pursuant to the Act. Pursuant to section 176(c)(1) of the Act Conformity means conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

Section 176(c)(4)(A) of the Act requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions (transportation and general) to applicable SIPs. The EPA published the final transportation conformity rules in the November 24, 1993, Federal Register and codified them at 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The conformity rules require States and local agencies to adopt and submit to the EPA a transportation conformity SIP revision not later than November 24, 1994. This notice does not address the conformity requirements applicable to general Federal actions which are set forth at 40 CFR part 51, subpart W. The EPA will take action on SIP revisions relating to those requirements in a separate notice.

II. Evaluation of the State's Submittal

Pursuant to the requirements under Section 176(c)(4)(C) of the Act, the Michigan Department of Environmental Quality (MDEQ) submitted a SIP revision to the EPA on November 24, 1994. The EPA found this submittal to be complete on April 13, 1995. In its submittal, the State adopted verbatim the EPA transportation conformity rule (40 CFR Part 93, Subpart A), Memorandum of Agreements (MOA) between the affected agencies, and Metropolitan Planning Organization (MPO) resolutions. On February 14,

1996, the EPA simultaneously published a direct final rule and a proposed rule in which EPA published its decision to approve the Michigan SIP revision. These rules were subject to a 30 day public comment period, during which the EPA received one adverse comment. For this reason, the EPA withdrew the direct final rule on April 12, 1996.

Transportation conformity is required for all areas which are designated nonattainment or maintenance for any transportation related criteria pollutants. At the time of the proposal, the State of Michigan had 25 areas designated ozone nonattainment, and one maintenance area. On February 14, 1996, EPA published a final rule (61 FR 5707) correcting the designation of 20 of the areas from nonattainment to attainment/unclassifiable for ozone, effective March 15, 1996. Pursuant to that final rule, the following areas are no longer required to assess the conformity of transportation plans, programs, and projects: The nonurbanized counties of Barry, Branch, Cass, Gratiot, Hillsdale, Huron, Ionia, Lapeer, Lenawee, Montcalm, Sanilac, Shiawassee, St. Joseph, Tuscola, and Van Buren; the urbanized areas of Battle Creek Metropolitan Statistical Area (MSA) (Calhoun County), Benton Harbor MSA (Berrien County), Jackson MSA (Jackson County), Kalamazoo MSA (Kalamazoo County), and Lansing-East Lansing MSA (Clinton, Eaton, and Ingham Counties). The following areas remain designated nonattainment or maintenance for ozone and are thus required to perform conformity determinations: The urbanized areas of Detroit-Ann Arbor Consolidated MSA (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties), Flint MSA (Genesee County), Grand Rapids MSA (Kent and Ottawa Counties), Muskegon MSA (Muskegon County), Saginaw-Bay City-Midland MSA (Bay, Midland, and Saginaw Counties), and the nonurbanized Allegan County. In addition, portions of three counties (Wayne, Oakland, and Macomb) remain designated carbon monoxide nonattainment.

III. Public Comments

One set of public comments was submitted jointly by the Citizens for Clean Air in the Lake Michigan Basin, American Lung Association of Michigan, and the East Michigan Environmental Action Council.

Comment: The commentor contends that Michigan inappropriately relies on the Michigan Environmental Protection Act (MEPA) for enforcement of its transportation conformity SIP revision. Specifically, the commentor contends that MEPA is not an adequate enforcement mechanism because, as interpreted by Michigan case law, it requires a citizen to demonstrate that a transportation project will have a statewide impact before the citizen can obtain injunctive relief.

Response: Section 110(a)(2) of the Act requires that all SIP measures be enforceable and that the states have adequate authority under local law to implement them. EPA therefore will not approve state transportation conformity provisions unless the state can demonstrate that it has adequate authority to compel compliance with such provisions. MDEQ, in consultation with the Michigan Attorney General, determined that Sections 336.115 and 336.26d of the Michigan Complied Laws (MCL), MSA § 14.58(5) and 14.58(16d)(1965 Mich.Pub.Acts 348), provide the State with ample authority to enforce the transportation conformity SIP provisions. Section 336.15 authorizes MDEQ to institute a civil action to compel compliance with those provisions and to take other actions necessary to enforce them, and Section 336.26d provides for the assessment of penalties and authorizes the attorney general to seek both penalties and injunctive relief for violations. ''Additional'' enforcement authority is found in the MEPA provisions upon which the commentors have focused. Those provisions authorize the attorney general or any person or legal entity to bring a civil action for declaratory and equitable relief for the ''protection of the air from pollution, impairment or destruction.'' Case law cited by the commentors recognizes that not all threats to the environment justify judicial intervention pursuant to MEPA. Rather, a determination of whether an environmental risk rises to the level of ''impairment or destruction'' depends on a variety of factors, including the magnitude of the harm, the characteristic of resources involved, the nature of defendant's actions, and the type of property involved. *Kimberly Hills Neighborhood Association* v. *Dion,* 114 Mich.App. 495, 320 N.W.2d 668 (1982). However, the fact that case law interpreting MEPA precludes a citizen from obtaining injunctive relief absent a showing that the impact on the environment will be significant does not negate the State's authority to enforce the transportation conformity SIP provisions pursuant to Sections 336.115 and 336.26d of the Michigan Complied Laws. Michigan's transportation conformity SIP provisions remain ''enforceable'' by the State within the meaning of Section 110(a)(2).

Comment: The commentor believes that the MOA between the affected agencies will not ensure compliance with the transportation conformity requirements.

Response: The MOA constitutes a binding agreement among the affected agencies to comply with the transportation conformity SIP and contains an outline which defines each agency's role and responsibilities in the transportation conformity process. Parties to the MOA agree to implement the transportation conformity process in compliance with the Act and the transportation conformity rule. Doubts raised by the commentors as to whether the parties will live up to their agreements do not warrant a finding that the State will not be able to enforce compliance with the transportation conformity SIP; nor do they warrant disapproval this SIP revision.

Comment: The commentor questioned why the direct final rule indicated that the following areas are required to assess conformity: Barry, Branch, Cass, Gratiot, Hillsdale, Huron, Ionia, Lapeer, Lenawee, Battle Creek MSA (Calhoun County), Benton Harbor MSA (Berrien County), Jackson MSA (Jackson County), Kalamazoo MSA (Kalamazoo County), Lansing-East Lansing MSA (Clinton, Eaton, and Ingham Counties). The commentor correctly states that transportation conformity is only required for nonattainment and maintenance areas and that the classifications of these counties were technically corrected from nonattainment to attainment for ozone, as published in 61 FR 5707 (February 14, 1996). Noting this discrepancy, the commentor believes that the Michigan transportation SIP was not prepared with the necessary care and attention to detail.

Response: Transportation conformity is required for all areas which are designated nonattainment or maintenance for any transportation related criteria pollutants. The State of Michigan submitted the transportation conformity SIP on November 24, 1994. At that time, all of the above listed areas were designated nonattainment for ozone. The EPA rulemakings on the transportation conformity SIP revision and on the technical correction proceeded simultaneously. Until the effective date of the technical correction, these areas were designated nonattainment for ozone and were required to assess conformity of transportation activities. The correction, which did not occur until February 14, 1996 and which did not become

effective until March 15, 1996, is reflected in this notice.

IV. EPA Action

The EPA is approving the transportation conformity SIP revision for the State of Michigan. The EPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal transportation conformity rules set forth at 40 CFR part 93, subpart A. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision.

V. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: November 21, 1996.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C 7401–7671q.

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (m) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(m) Approval—On November 24, 1994, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a plan for the implementation and enforcement of the Federal transportation conformity requirements at the State or local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

* * * * *

3. Part 52 is amended by adding § 52.1185 to read as follows:

§ 52.1185 Control strategy: Carbon Monoxide.

(a) Approval—On November 24, 1994, the Michigan Department of Natural Resources submitted a revision to the carbon monoxide State Implementation Plan. The submittal pertained to a plan for the implementation and enforcement of the Federal transportation conformity requirements at the State or local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

* * * * *

[FR Doc. 96–32058 Filed 12–17–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 95–011]

RIN 2115–AF02

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Implementation of Drug Testing in Foreign Waters

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: This rule establishes January 2, 1997 as the effective date for implementation of chemical drug testing of persons onboard U.S. vessels in waters subject to the jurisdiction of a foreign country. However, industry will have until July 1, 1997 to implement the required testing. The rule also provides for exemption from testing requirements when compliance would violate the domestic laws or policies of another country. The Coast Guard is requesting public comment on this interim rule.

DATES: This rule is effective on January 2, 1997. Section 16.207 must be implemented on or before July 1, 1997. Comments must be received before February 18, 1997.

ADDRESSES: Comments may be mailed or delivered to Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001. Unless otherwise indicated, comments and other documents referred to in this preamble are available for inspection or copying in room 3406 at the above address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jennifer Ledbetter, Project Manager, Marine Investigation Division (G–MOA–1), Office of Marine Safety, Security and Environmental Protection, (202) 267–0684.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On November 21, 1988, the Coast Guard, along with other agencies of the Department of Transportation (DOT), promulgated regulations requiring pre-employment, periodic, post-accident, reasonable cause, and random drug testing of U.S. crewmembers on U.S. vessels (53 FR 47079). The final rule provided that the testing requirements of 46 CFR part 16 did not apply to any person for whom compliance with the rules would violate the domestic laws or policies of another country. The effective date of part 16 with respect to any person onboard U.S. vessels in waters subject to the jurisdiction of a foreign government was delayed until January 1990.

The preamble to the rule stated that DOT and other agencies of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our chemical testing rules and foreign government laws or policies. The Coast Guard also stated that if, as a result of those discussions, it was found that amendments to the rule were necessary, timely amendments would be issued. Subsequently, a rule was published on December 27, 1989 (54 FR 53286) delaying implementation of chemical testing for persons onboard U.S. vessels in waters subject to the jurisdiction of a foreign government until January 2, 1992. A final rule was published on April 24, 1991, delaying the implementation date to January 2, 1993 (56 FR 18982); a final rule was published on July 14, 1992, delaying the implementation date to January 2, 1995 (57 FR 31274); a final rule was published on December 20, 1994, delaying the implementation date to January 2, 1996 (59 FR 65500); and a final rule was published on December 28, 1995, delaying the implementation to January 2, 1997 (60 FR 67062). These rules did not prohibit employers from conducting chemical testing of U.S. personnel in foreign waters, they simply delayed the requirement for such testing in those areas. Many companies continued to test mariners in foreign waters under company policy. To this date, there have been no reports of conflicts with foreign laws resulting from that testing

On August 21, 1995, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) proposing to revise 46 CFR 16.207 to provide that U.S. drug testing requirements would not apply in waters subject to the jurisdiction of a foreign government. The proposal would have ensured that Coast Guard drug testing regulations did not conflict with foreign law or policy and would have resulted in no change to the then current applicability of the drug testing requirements.

Discussion of Comments and Changes

Eight comments were received in response the NPRM. Only one comment supported the proposal. That comment supported the proposed rule because it would remove the conflict regarding jurisdiction within waters that are subject to foreign government control.

The remaining seven comments opposed their proposal in the NPRM for several reasons. One stated reason was that the proposed rule would prevent them (employers) from testing while in foreign waters. This was a misinterpretation common to most of the comments opposing the proposal. Neither the original final rule, which contained, a delay of implementation date, nor the proposed rule, which would have eliminated the testing requirement entirely, would in any way prohibit an employer from conducting chemical drug testing on employees. Only the requirement to test was delayed or removed.

One comment stated that the existence of federal requirements is a critical component in its desire to identify substance abusers. Another comment strongly supported the goal of a drug-free workplace and viewed testing as a key component in that effort. The proposed rule appeared to them to exempt a substantial number of U.S. seamen from coverage under essential elements of the testing program and was perceived as sending a confusing message to the maritime industry, particularly those U.S. seamen who work in foreign waters. The comments did not support any lessening of the chemical testing requirements because doing so would advise a substance abuser that once they go foreign they are free of the possibility of being tested.

Another issue raised consistently by the comments was the discrepancy between the proposed removal of testing requirements of part 16, but not in part 4 (post-casualty testing requirements). The comments correctly noted that if a casualty occurred in waters subject to the jurisdiction of a foreign country that drug and alcohol testing was required by 46 CFR part 4.

All the comments that supported requiring chemical testing in foreign waters requested that a clause be included in the regulations that would allow for an exemption from testing when there is an actual conflict with a foreign law or policy. The Coast Guard agrees. Based on the lack of any problems experienced by companies presently conducting chemical testing in foreign waters and based on the comments expressing a need for testing requirements wherever a vessel might be, the Coast Guard has decided to retain the original requirements for chemical testing of U.S. crewmembers onboard U.S. vessels within waters that are subject to the jurisdiction of a foreign government and to make this provision effective on January 2, 1997.

The rule also adds a provision under which the Coast Guard will consider waivers, on a case by case basis, when an actual conflict with a foreign law or policy is brought to our attention.

Under 5 U.S.C.(d), the Coast Guard finds good cause why this rule should be made effective in fewer than 30 days after date of publication. Although the effective date of the rule is January 2, 1997, the Coast Guard recognizes that there may be a need for an implementation period. Therefore, employees will have until July 1, 1997 to implement the final rule on U.S. vessels in waters subject to the jurisdiction of a foreign country.

Although the changes in this rule are responsive to and fully supported by the comments received, the Coast Guard is offering a period for submission of additional comments. This rule is being published as an interim rule with a 60-day comment period. This action will implement the testing requirements without further temporary delays as in past years, but will allow the regulated employers to review and comment on the rule before it is adopted as final. Comments should be mailed to the Executive Secretary, Marine Safety Council, at the address under **ADDRESSES**.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6 (a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11034 (February 26, 1979)). The Coast Guard acknowledges that there are companies whose current policy is not to conduct chemical testing in waters subject to a foreign government. To implement such testing now would increase their operating expenses. This ''increase'', however, was part of the costs evaluated in the original rulemaking and deferred to this time because of the numerous delays in implementing testing in foreign waters. The economic impact of these changes is so minimal that further evaluation is not necessary. This final rule implements the effective date for compliance with Coast Guard regulations governing chemical testing, insofar as those regulations would require testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 16 as follows:

PART 16—CHEMICAL TESTING

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

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. Section 16.207 is revised to need as follows:

§ 16.207 Conflict with foreign laws.

(a) This part applies to the testing of all U.S. crewmembers onboard U.S. vessels operating in waters that are subject to the jurisdiction of a foreign government on and after January 2, 1997; however, implementation may be delayed until July 1, 1997.

(b) Employers for whom compliance with this part would violate the domestic laws or policies of another country may request an exemption from the drug testing requirements of this part by submitting a written request to Commandant (G–MOA), at the address listed in § 16.500(a).

Dated: December 9, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 96–32028 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–14–M

46 CFR Part 125

[CGD 96–058]

RIN 2115–AF35

Offshore Supply Vessels; Alternate Tonnage

AGENCY: Coast Guard, DOT.

ACTION: Final rule; interpretation.

SUMMARY: The Coast Guard is establishing an alternate maximum size limit for offshore supply vessels that is based on the measurement system established under the International Convention on Tonnage Measurement of Ships, 1996. The present maximum size limit of 500 gross tons is based on the U.S. regulatory measurement system. This action provides an alternative for owners and operators of offshore supply vessels that may result in the building of safer, more efficient vessels and may enable the U.S. designers and operators of these vessels to be competitive in the international market.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Eareckson, Marine Safety Center, (202) 366–6441.

SUPPLEMENTARY INFORMATION:

Regulatory Information

This rule is issued as an interpretative rule as authorized by section 702 of the Coast Guard Authorization Act of 1996 (the Act) (Pub. L. 104–324; October 19, 1996). The Conference Report on the Act (H. Rept. 104–854) states that,

because this rule is considered to be an interpretive rule under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the notice of proposed rulemaking and comment requirements and the 30 day delay of effective date under 5 U.S.C. 553 would not be required in order to expedite this rulemaking. Therefore, this rule is being made effective on the date of publication in the Federal Register.

Scope of This Rulemaking

It is the intent of the Coast Guard, in this interpretive rule, to implement sections 702 and 709(3) of the Act which authorize the Secretary of Transportation (Coast Guard) to prescribe an alternate tonnage for offshore supply vessels. Section 702 of the Act amends 46 U.S.C. 14104 to provide the Coast Guard with discretionary authority to prescribe an alternate tonnage for a statute if that statute specifically states that an alternate tonnage may be prescribed under section 14104. Section 709(3) of the Act amends 46 U.S.C. 2101(19) to define an offshore supply vessel as a motor vessel of more than 15 gross tons but less than 500 gross tons as measured under 46 U.S.C. 14502 (regulatory measurement), or an alternate tonnage under 46 U.S.C. 14302 (convention measurement) as prescribed by the Secretary (Coast Guard) under section 14104, that regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources. The scope of this rulemaking is limited to prescribing an alternate tonnage threshold based on convention measurement to the maximum size limit of 500 gross tons (regulatory measurement) specified in the definition of ''offshore supply vessel'' in 46 U.S.C. 2101(19). To establish this alternate tonnage, this rule amends the definition of ''offshore supply vessel'' or ''OSV'' in 46 CFR chapter I, subchapter L, entitled ''Offshore Supply Vessels.''

The Coast Guard recognizes that future rulemaking will be required to address other tonnage thresholds that apply to an OSV, such as the 200 gross ton threshold established under 46 U.S.C. 8301 that sets the standard for when an OSV is required to have a licensed engineer. In establishing alternate tonnage thresholds for this and other parameters, the Coast Guard intends to solicit comments from the public through notices in the Federal Register. Also, the Coast Guard intends to use this approach in establishing alternate tonnage thresholds applicable to other vessel-types as well. However, it is important to note that the Coast Guard has the authority to establish alternate tonnage thresholds only for those statutory provisions authorized by the Congress. At the present time, authorization has been granted only for those statutes listed in sections 702 through 744 of the Act.

Background

Tonnage is the principal parameter used in the shipping statutes to authorize Coast Guard regulations of a vessel according to its size. Also, tonnage has been used for a variety of other purposes including the assessment of taxes and fees. The traditional system used in the United States for measuring a vessel to determine its tonnage is called the regulatory measurement system and is authorized under 46 U.S.C. chapter 145. It consists of the standard, dual, and simplified measurement systems and is implemented under 46 CFR part 69, subparts C, D, and E, respectively. The regulatory measurement system, with the exception of the simplified system used primarily for smaller vessels, provides for a complex series of internal measurements and exemptions to arrive at gross tonnage. Over time, this system has become increasingly susceptible to manipulation because the system allows vessel designers to use features, such as excessive framing and tonnage openings, solely to reduce the gross tonnage of the vessel artificially. In this manner, increasingly larger vessels can be designed to fall within the tonnage bounds of their class. In most cases, these design features have a negative impact on the cost, efficiency, and international competitiveness of vessels. These features can also adversely affect safety performance.

In response to this problem, the United States ratified the International Convention on Tonnage Measurement of Ships, 1969, which establishes a worldwide system of measurement that provides a genuine representation of a vessels's size. Convention measurement is authorized under 46 U.S.C. chapter 143 and is implemented in 46 CFR part 69, subpart B. Under the convention measurement system, gross tonnage is based on a logarithmic function of the total enclosed volume of the vessel and is not subject to manipulation by the use of tonnage reduction techniques. Because of the differences between regulatory measurement and convention measurement, the tonnage for a single vessel could differ substantially (e.g., by thousands of tons for a 200 foot vessel). Because convention measurement does not allow for artificial tonnage reduction techniques, vessels measured using this system often are greater in tonnage than vessels measured using regulatory measurement.

The Act authorizes the Coast Guard to establish tonnages based on the convention measurement system as an alternative to tonnages based on the regulatory measurement system when a particular statute specifically provides that authority. With oil and gas production moving farther offshore and the average age of the present OSV fleet approaching 20 years, a market for technologically advanced vessels has evolved. With this in mind and to discourage the continued use of tonnage reduction techniques on these vessels, the Coast Guard has decided to make the alternate tonnage threshold for offshore supply vessels a priority. In the interest of expediency and recognizing that new construction in many cases can not effectively begin until an alternate tonnage is established for the maximum size of an OSV, the Coast Guard is establishing only the maximum size parameter in the definition of an OSV in 46 U.S.C. 2101(19) in this rule.

Major Factors Considered in Determining Alternate Tonnage

In determining an alternate tonnage parameter for the maximum size of an OSV under the convention measurement system, the Coast Guard took into consideration the following:

(1) The largest U.S.-flag offshore supply vessels in service today measure approximately 2,000 gross tons under the convention measurement system. However, there is no theoretical upper limit to the physical size that an OSV could be if tonnage reduction techniques are employed to keep its regulatory tonnage below the stuatory maximum of 500 gross tons for an OSV.

(2) Technological advances in recent years have enabled the recovery of oil resources in increasingly deeper water. As a result of increased deep water operations, there has become a greater need for vessels with more capabilities and cargo-carrying capacities than those in service today. Selection of an alternate tonnage in excess of 2,000 gross tons gives industry the flexibility to build these new vessels without having to employee tonnage reduction techniques and to meet the needs of the offshore oil and gas exploration and production industries.

(3) Under Resolution A.469(XII), the International Maritime Organization (IMO) adopted guidelines entitled, ''Guidelines for the Design and Construction of Offshore Supply Vessels.'' These TWO guidelines apply to vessels that are less than 100 meters in length, corresponding to a size of

approximately 6,000 gross tons, as measured under the convention measurement system, for an OSV of modern design. A number of offshore supply vessels approaching this size have been built under foreign flag or are on order in foreign shipyards. In authorizing the establishment of alternate tonnages for vessels under the convection measurement system, Congress indicated in the Conference Committee report that alternate tonnages enable U.S. vessel designers and operators to be more competitive in the international market.

(4) The safety record for the U.S. OSV fleet has been satisfactory. Further, there is no evidence to suggest that an increase of size would decrease the safety performance of these vessels. Under the convention measurement system these factors support the selection of an alternate tonnage threshold in excess of the highest tonnage assigned to the largest U.S.-flag OSV in service today.

Conclusion

Based on the factors considered and a comprehensive review of existing design and operating standards applicable to an OSV, the Coast Guard concluded that it is acceptable and appropriate to apply existing OSV regulations to vessels as large as 6,000 gross tons as measured under the convention measurement system. This figure corresponds to the 100-meter maximum length for vessels constructed to the latest international standards. An upper size limit of 6,000 gross tons will provide the OSV industry with the flexibility to build and operate vessels that are competitive with foreign-flag vessels built and operated under international standards. Therefore, the Coast Guard has determined that the appropriate alternate tonnage for the maximum size limit for an OSV is 6,000 gross tons for vessels measured under the convention measurement system. This rule amends the definition of OSV in 46 CFR 125.160, which contains definitions applicable to the Coast Guard's general OSV regulations in 46 CFR chapter I, subchapter L.

With the promulgation of this regulation and the need for the OSV fleet to accommodate operations in deeper waters, the Coast Guard will monitor closely all aspects of the design, construction, and operating performance of vessels built after promulgation of this rule. Under 46 U.S.C. 3306, the Coast Guard may consider additional standards for these vessels if deemed necessary due to the promulgation of this regulation. Any rulemaking to establish additional standards will provide an opportunity for public comment.

Effect on Alternate Tonnage on International Agreements

The establishment of a 6,000 gross ton alternate threshold in the definition of an OSV will not affect international requirements applicable to these vessels. For example, any U.S.-flag OSV with a keel laid after July 18, 1994, that engage on a foreign voyage must comply with international convention requirements based on the vessel's gross tonnage as assigned under the convention measurement system. These conventions include the International Convention for the Safety of Life at Sea (SOLAS), International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), and the International Convention for the Prevention of Pollution from Ships (MARPOL).

Licensing Considerations

Under the 1995 amendments to STCW, tonnage thresholds were adjusted upwards to reflect the higher gross tonnages that have been assigned to many vessels measured under the convention measurement system. A rulemaking to implement the new STCW requirements is currently being developed (Coast Guard docket CGD 95–062). The Coast Guard will address, in CGD 95–062, licensing requirements for personal serving threshold as measured under the convention measurement system.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040); February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The objective of this rulemaking is to provide a definition of an OSV using an alternate tonnage threshold for vessels measured under the convention measurement system. This rule imposes no new regulatory burdens and may provide benefits for owners of an OSV built in the future. By designing a vessel under the convention measurement system, a vessel can be built with reduced cost and steelweight, with greater cargo-carrying capacity, and with improved structural safety.

Small Entities

Under the Act, this rule is considered an interpretive rule and is not subject to the requirement under 5 U.S.C. 553(b) for publication of a general notice of proposed rulemaking. Therefore, under 5 U.S.C. 601, it is not a rule that is subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nevertheless, this rule will effect primarily OSV owners, which, because of the high cost of the vessels, tend to be larger corporations. Smaller entities associated with the design and construction of these vessels may benefit from the potential increase in construction orders for new vessels. This increase is anticipated due to the improved competitiveness of these vessels in the international market provided by the establishment of an alternate tonnage threshold under the convention measurement system.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (14 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e(34)(a) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule establishes a maximum tonnage threshold for offshore supply vessels measured under the convention measurement system. This rule is editorial or procedural in nature and interprets existing law. It has no effect on the environment. A ''Categorical Exclusion Determination'' is available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

List of Subjects in 46 CFR Part 125

Administrative practice and procedures, Authority delegation, Hazardous materials transportation, Marine Safety, Offshore supply vessels, Oil and gas exploration, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 125 as follows:

PART 125—GENERAL

1. The authority citation for part 125 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307, 14104; 49 U.S.C. App. 1804; 49 CFR 1.46.

2. In § 125.160, in the definition of *Offshore supply vessel* or *OSV*, the introductory text is republished and paragraph (3) is revised to read as follows:

§ 125.160 Definition.

* * * * *

Offshore supply vessel or *OSV* means a vessel that—

* * * * *

(3) Is more than 15 but less than 500 gross tons (as measured under the Standard, Dual, or Simplified Measurement System under part 69, subpart C, D, or E of this chapter) or less than 6,000 gross tons (as measured under the Convention Measurement System under part 69, subpart B of this chapter); and

* * * * *

Dated: November 15, 1996

J. C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–31991 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 501, 502, 504, 514, 552, and 560

[Docket No. 96–23]

Regulations Affecting Maritime Carriers and Related Activities in Domestic Commerce

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (''FMC'' or ''Commission'') is removing its rules governing the financial reporting and agreement activity of, and rate proceedings involving, vessel-operating common carriers by water in the domestic offshore trades. Jurisdiction over the port to port operations of those carriers has been transferred to the Surface Transportation Board. The Commission is also amending various other parts of its regulations to delete references to the removed parts.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Austin L.Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, DC 20573–0001, 202–523–5787.

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Public Law No. 104–88, 109 Stat. 803 (''ICC Termination Act''), transferred jurisdiction over port to port operations in the noncontiguous domestic trade, which formerly had been regulated by the FMC under the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843–848 (''1933 Act'') and the Shipping Act, 1916, 46 U.S.C. app. 801–842 (''1916 Act''), to the Surface Transportation Board (''Board''). Accordingly, the Commission is removing its major regulations governing domestic offshore carriers, namely Part 552—Financial Reports of Vessel Operating Common Carriers by Water in the Domestic Offshore Trades, Part 560—Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916, and 46 CFR 502.67—Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933. Only these major regulations governing domestic carriers and references thereto are being deleted at this time. All remaining references to the domestic offshore trades in 46 CFR and any technical conforming amendments necessary will be made at a later date.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations.

The removal of Parts 552, 560 and § 502.67, and references thereto, is housekeeping in nature and will not impact a substantial number of small entities.

This final rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, OMB review is not required.

Notice and opportunity for public comment are not necessary prior to issuance of these amendments because they reduce existing requirements by deleting rules to reflect statutory changes to the Commission's jurisdiction. For the same reason, the amendments are effective upon publication in the Federal Register, rather than being delayed for 30 days. 5 U.S.C. 553.

List of Subjects

46 CFR Part 501

Organization and functions, Delegation of authority, Seals and insignia.

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Reporting and recordkeeping requirements.

46 CFR Part 504

Environmental impact statements, Reporting and recordkeeping requirements.

46 CFR Part 514

Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 552

Maritime Carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

46 CFR Part 560

Administrative practice and procedure, Antitrust, Freight, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; and Pub. L. 104–88, 109 Stat. 803, chapter IV of title 46 of the Code of Federal Regulations is amended as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. The authority citation for Part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 801–848, 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub.L. 89–56, 79 Stat. 195; 5 CFR Part 2638.

2. In § 501.5, paragraph (e) is amended by removing the words ''Shipping Act, 1916'' and the comma immediately thereafter; and paragraph (g) is revised; and the second sentence of paragraph (h) is revised to read as follows:

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(g) Under the direction and management of the Bureau Director, the

Bureau of Economics and Agreement Analysis develops and administers programs in connection with the anticompetitive and cooperative arrangements and practices of common carriers by water, freight forwarders and terminal operators in the foreign commerce of the U.S., including the filing of ocean common carrier agreements under section 5 of the Shipping Act of 1984, and the filing of agreements by marine terminal operators under section 5 of the Shipping Act of 1984. The Bureau provides expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices under section 19 of the Merchant Marine Act, 1920, and the Foreign Shipping Practices Act of 1988.

(h) * * * These programs carry out provisions of the Shipping Act of 1984; and Public Law 89–777, as implemented under Parts 510, 514, 540, 582 and 583 of this chapter. * * *

* * * * *

3. In § 501.24, paragraph (e) is revised to read as follows; and paragraph (h) is removed and reserved.

§ 501.24 Delegation to the Secretary.

* * * * *

(e) Authority to prescribe a time limit for the submission of written comments with reference to agreements filed pursuant to section 5 of the Shipping Act of 1984.

* * * * *

4. In § 501.26, paragraphs (a) through (d) are removed and reserved; paragraph (l) introductory text is amended by removing the words ''the Shipping Act, 1916, or''; paragraph (m) is amended by removing the words ''section 15 of the Shipping Act, 1916, or''; and paragraph (p) is removed.

PART 502—RULES OF PRACTICE AND PROCEDURE

5. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

6. In § 502.41, the third sentence is revised to read as follows.

§ 502.41 Parties; how designated.

* * * A party against whom relief or other affirmative action is sought in any proceeding commenced under § 502.62 or § 502.66, or a party named in an order of investigation issued by the Commission, shall be designated as ''respondent,'' except that in investigations instituted under section 11(c) of the Shipping Act of 1984, the parties to the agreement shall be designated as ''proponents'' and the parties protesting the agreement shall be designated as ''protestants.'' * * *

§ 502.67 [Removed and Reserved]

7. Section 502.67 is removed and reserved.

§ 502.74 [Amended]

8. In § 502.74, paragraph (b) is amended by removing the words ''protests seeking suspension of tariffs (§ 502.67)'' and the comma immediately thereafter.

9. Section 502.111 is amended by revising the first two sentences of paragraph (b) to read as follows:

§ 502.111 Form and appearance of documents filed with Commission.

* * * * *

(b) Filings by facsimile will not be accepted. Photocopies of facsimile transmissions of signature pages on filings will be tentatively accepted for the purpose of meeting filing deadlines pending receipt of the original within seven working days. * * *

§ 502.114 [Amended]

10. In § 502.114, paragraph (c) is amended by removing the words ''protests pursuant to § 502.67''.

§ 502.118 [Amended]

11. In § 502.118, paragraph (b)(5) is amended by removing the words ''§ 502.67(d) and''.

12. Section 502.155 is revised to read as follows.

§ 502.155 Burden of proof.

In all cases, as prescribed by the Administrative Procedure Act, 5 U.S.C. 556(d), the burden of proof shall be on the proponent of the rule or order. [Rule 155.]

§ 502.227 [Amended]

13. In § 502.227, paragraph (a)(6) is amended by removing the words ''§ 502.67 and''.

§ 502.271 [Amended]

14. In § 502.271, paragraph (b) is removed and reserved.

PART 504—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

15. The authority citation for Part 504 continues to read as follows:

Authority: 5 U.S.C. 552, 553; secs. 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820 and 841a); secs. 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712 and 1716); sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(b)) and sec. 382(b) of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6362).

16. In § 504.4, paragraph (a)(5) is amended by removing the words ''and domestic''; paragraph (a)(8) is removed and reserved; paragraph (a)(9) is amended by removing the words ''section 15 of the Shipping Act, 1916 or''; paragraphs (a)(17) and (a)(21) are removed and reserved; and paragraph (a)(22) is amended by removing the words ''the Shipping Act, 1916 or''.

PART 514—TARIFFS AND SERVICE CONTRACTS

17. The authority citation for Part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

18. In § 514.1, the last sentence of paragraph (d)(1) and paragraph (d)(2) are revised to read as follows:

§ 514.1 Scope, purpose, requirements, penalties and fees.

* * * * *

(d)(1) * * * The mere filing of a tariff does not excuse the tariff owner or publisher from the obligations of the 1984 Act or this chapter, regardless of whether these obligations preceded or followed the filing of the tariff in question.

(2) Any tariff matter submitted for filing, including service contracts and their essential terms, which fails in any respect to conform with the applicable shipping statutes, with the provisions of this part, or with a Commission Order, is subject to rejection or partial rejection after filing.

* * * * *

§ 514.2 [Amended]

19. In § 514.2, the definition of *conference* is amended by removing ''§ 560.307(b) and''; the definition of *marine terminal services agreement* is amended by removing ''§ 560.308(a) or''; the definition of *round trip excursion voyage* is removed; and the text of the definition of *through transportation (domestic offshore commerce)* is amended by removing the last two sentences.

20. In § 514.3, the first sentence of paragraph (a)(1) is revised to read as follows; paragraphs (a)(3), (a)(5) and (a)(6) are removed and reserved; the introductory text of paragraph (a)(7) is revised to read as follows; paragraph

(a)(8)(ii) is amended by removing ''§ 560.308(a) or'' and ''§ 560.307(b) and'; paragraph (a)(10) is removed and reserved; the text of paragraphs (b)(3) and (b)(5) is revised to read as follows; and paragraph (e) is amended by removing the words ''under parts 515, 550, 580 and/or 581 of this chapter''.

§ 514.3 Exemptions and exclusions.

* * * * *

(a) * * *

(1) * * * Equipment-interchange agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers, are exempt from the tariff filing requirements of the 1984 Act and the rules of this part.

* * *

* * * * *

(7) *Terminal barge operators in Pacific Slope States.* Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States are exempt from the tariff filing requirements of 1984 Act and the rules of this part, where:

* * * * *

(b) * * *

(3) * * * Transportation of used military household goods and personal effects by non-vessel-operating common carriers is exempt from the filing requirements of the 1984 Act and the rules of this part.

* * * * *

(5) * * * Transportation of used military household goods and personal effects by non-vessel-operating common carriers shipped by federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration is exempt from the filing requirements of the 1984 Act and the rules of this part.

* * * * *

21. In § 514.9, paragraph (b)(1)(i)(A) is redesignated as paragraph (b)(1)(i), and paragraph (b)(1)(i)(B) is removed; the text of paragraph (b)(7) is revised to read as follows; paragraph (b)(9)(i)(A) is redesignated as paragraph (b)(9)(i), and paragraph (b)(9)(i)(B) is removed; and paragraph (b)(24)(ii)(B) is removed and reserved.

§ 514.9 Filing/Amendment codes and required notice periods.

* * * * *

(b) * * *

(7) * * * Amendments of domestic offshore tariffs which change rates, fares, charges, Tariff Rules, or other tariff provisions and which constitute a general increase or decrease in rates, shall be filed at least 60 days prior to their effective date and shall use the symbol ''G.''

* * * * *

PART 552—[REMOVED]

22. Part 552 is removed.

PART 560—[REMOVED]

23. Part 560 is removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–32064 Filed 12–17–96; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–88; RM–8641, RM–8688, RM–8689]

Radio Broadcasting Services; Rose Hill, Trenton, Aurora, Ocracoke, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Aurora Broadcasting, allots Channel 283A to Aurora, NC, as the community's first local aural transmission service. The request of Duplin County Broadcasters to substitute Channel 284C2 for Channel 284A at Rose Hill, NC, reallot Channel 284C2 to Trenton, NC, as the community's first local aural service, and modify the license of Station WBSY accordingly, is denied. At the request of JEE, the Commission dismisses its counterproposal to allot Channel 284C3 to Ocracoke, NC, as the community's second local FM service. See 60 FR 32933, June 26, 1995. Channel 283A can be allotted to Aurora in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 35–18–13 NL; 76–47–18 WL. With this action, this proceeding is terminated.

DATES: Effective January 27, 1997. The window period for filing applications will open on January 27, 1997, and close on February 27, 1997.

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. 95–88, adopted December 6, 1996, and released December 13, 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

Radio 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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Aurora, Channel 283A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–32023 Filed 12–17–96; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 121096A]

Atlantic Tuna Fisheries; Adjustment

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

ACTION: Catch limit adjustment.

SUMMARY: NMFS adjusts the daily catch limit for the Angling category fishery for Atlantic bluefin tuna (ABT) to one fish per vessel, which may be from the school, large school, or small medium size class of ABT. This action is being taken to lengthen the fishing season and to ensure reasonable fishing opportunities in all geographic areas without risking overharvest of this category.

EFFECTIVE DATE: The daily catch limit adjustment is effective 12:01 a.m., local time, January 1, 1997, until the effective date of the 1997 Atlantic tuna annual quotas and effort controls, which will be published in the Federal Register.

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

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limits in order to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

The daily catch limit is adjusted as follows: No more than one bluefin tuna may be retained each day per Angling category vessel, which may be from the school, large school, or small medium size class.

Based on landings reported in the southern area in February and March 1996, which caused the Angling category fishery to be closed prematurely, this action is being taken to lengthen the fishing season and ensure reasonable fishing opportunities in all geographic areas without risking overharvest.

Subsequent adjustments to the daily catch limit, if any, shall be announced through publication in the Federal Register. In addition, anglers may call the Highly Migratory Species Information Line at 301–713–1279 or 508–281–9305 for updates on quota monitoring and catch limit adjustments. Anglers aboard Charter/Headboat and General category vessels, when engaged in recreational fishing for school, large school, and small medium ABT, are subject to the same rules as anglers aboard Angling category vessels.

Classification

This action is taken under 50 CFR 285.24(d)(3) and is exempt from review under E.O. 12866.

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

Dated: December 12, 1996.

Gary Matlock,

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

[FR Doc. 96–31995 Filed 12–17–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 244
Wednesday, December 18, 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–AWP–32]

Proposed Amendment of Class E Airspace; Battle Mountain, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Battle Mountain, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 03 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Battle Mountain Airport, Battle Mountain, NV.

DATES: Comments must be received on or before January 10, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–32, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, CA 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261, telephone (310) 725–6556.

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 number 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 the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–32.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or 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 comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, CA 90261, 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 NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Battle Mountain, NV. The development of GPS SIAP at Battle Mountain Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 03 SIAP at Battle Mountain Airport, Battle Mountain, NV. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this 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. Therefore, this proposed regulation—(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 10034; 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 proposed rule would 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, Incorporated by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes 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 the 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP NV E5 Battle Mountain, NV [Revised]

Battle Mountain Airport, NV
(lat. 40°35′54″N, long. 116°52′31″W)
Battle Mountain VORTAC
(lat. 40°34′09″N, long. 116°55′20″W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Battle Mountain Airport and 4.3 miles each side of the Battle Mountain VORTAC 218° radial, extending from the Battle Mountain VORTAC to 13.9 miles southwest of the Battle Mountain VORTAC and 4 miles each side of the Battle Mountain VORTAC 250° radial, extending from the Battle Mountain VORTAC to 14.2 miles west of the Battle Mountain VORTAC. That airspace extending upward from 1,200 feet above the surface within a 8.7 miles southeast and 13 miles northwest of the Battle Mountain VORTAC 218° and within 8.7 miles southeast and 11.7 miles northwest of the Battle Mountain VORTAC 038° radials extending from 25 miles southwest to 10.4 miles northeast of the Battle Mountain VORTAC and within 5.6 miles south and 7.8 miles north of the Battle Mountain VORTAC 077° and 257° radials, extending from 7 miles west to 16.1 miles east of the Battle Mountain VORTAC.

* * * * *

Issued in Los Angeles, California, on November 29, 1996.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–32018 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270 and 274

[Release Nos. 33–7371, IC–22383, S7–29–96]

RIN 3235–AE17

Technical Revisions to the Rules and Forms Regulating Money Market Funds

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for public comment proposed amendments to rules and forms under the Securities Act of 1933 and the Investment Company Act of 1940 that govern money market funds. Proposed technical amendments to rule 2a–7 under the Investment Company Act of 1940, the rule regulating money market funds, would, among other things, revise terminology used in the rule to reflect common market usage, and codify a number of interpretive positions taken by the staff of the Division of Investment Management. Proposed amendments to the advertising rules applicable to money market funds would clarify the formula used by money market funds to calculate yield and would prevent investors from being confused or misled by presentation of a money market fund's short-term total return in lieu of its yield.

DATES: Comments must be received on or before January 24, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–29–96; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will also be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Marjorie S. Riegel, Senior Counsel, Office of Chief Counsel, at (202) 942–0660, Division of Investment Management, Stop 10–6, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') today is proposing for comment technical amendments to rule 2a–7 [17 CFR 2a–7] (''rule 2a–7'' or the ''rule'') under the Investment Company Act of 1940 [15 U.S.C. 80a–1, et seq.] (''1940 Act'') and conforming amendments to rules 2a41–1, 12d3–1 and 31a–1 under the 1940 Act [17 CFR 270.2a41–1, 270.12d3–1 and 270.31a–1]. The Commission also is proposing amendments to rule 482 [17 CFR 230.482] under the Securities Act of 1933 [15 U.S.C. 77a, et seq.] (''1933 Act''); and Forms N–1A [17 CFR 239.15A and 274.11A], N–3 [17 CFR 239.17a and 274.11b] and N–4 [17 CFR 239.17b and 274.11c].

I. Proposed Technical Amendments to Rule 2a–7

A. Background

On March 21, 1996, the Commission adopted amendments to rule 2a–7 that revised the rule to tighten the risk-limiting conditions imposed on tax exempt money funds and to address the treatment under the rule of certain instruments, such as asset backed securities (''March Amendments'').[1] Industry participants[2] have raised a number of questions concerning the application of the March Amendments in different contexts subsequent to their adoption. To respond to many of these questions, the Division of Investment Management published an interpretive letter (''Q&A Letter'').[3] The technical amendments proposed for public comment today would: (1) codify a number of interpretive positions taken by the staff in the Q&A Letter; (2) revise terminology used in the rule to reflect common market usage; (3) modify certain of the March Amendments so that the treatment accorded certain instruments (e.g., guarantees) by the rule more closely reflects the treatment accorded to those instruments by the financial markets; and (4) make certain other technical corrections.[4]

B. Discussion

1. Guarantees

a. Definition of ''Guarantee''

Many money market instruments are subject to guarantees and other forms of unconditional credit support that, among other things, provide the requisite credit quality to make an instrument eligible for investment under

[1] Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (March 21, 1996) [61 FR 13956 (March 28, 1996)] (''Release 21837''). Unless otherwise noted, all references to rule 2a–7, or to any paragraph of the rule, will be to the applicable paragraph of 17 CFR 270.2a–7, as amended by Release 21837. When a paragraph is renumbered in the rule as it is proposed to be amended, citations will be given both to rule 2a–7, ''as proposed to be amended,'' and to the rule as amended by Release 21837.

[2] In this Release, the term ''industry participants'' refers to those representatives of money market funds, investment advisers, law firms, issuers and underwriters of securities, and professional and trade associations that informally have sought advice from the staff concerning the application of the March Amendments, raised interpretive questions, or suggested changes to the rule.

[3] Investment Company Institute (pub. avail. May 9, 1996).

[4] The Commission has suspended the compliance date for certain of the March Amendments. See Revisions to the Rules Regulating Money Market Funds, Investment Company Act Release No. 22135 (Aug. 13, 1996) [61 FR 42786 (Aug. 19, 1996)] (''Compliance Date Release''), and Section III of this Release, which requests comment on a new compliance date.

rule 2a–7. Rule 2a–7 characterizes certain of these arrangements as ''puts'' [5] and ''unconditional puts.'' [6] This aspect of the definition has caused some confusion among industry participants. The Commission is, therefore, proposing to revise the rule's terminology by replacing references to ''put'' and ''unconditional put'' with a new term ''guarantee'' that would include a wide-range of arrangements designed to unconditionally support the credit of the issuer of a security.[7] In addition, the Commission would amend the credit quality and diversification provisions of the rule to incorporate the proposed term, as discussed below. Comment is requested on the proposed definition of the term ''guarantee.''

b. Credit Substitution

One type of guarantee to which rule 2a–7 specifically refers is an ''unconditional demand feature.'' [8] Rule 2a–7 permits a fund to rely on the credit quality of the issuer of an unconditional demand feature in determining the credit quality of the security.[9] Recognizing that a money market fund relies on the credit quality of the issuer of the unconditional demand feature rather than the issuer of the security subject to the demand feature in determining whether to invest in the security, the March Amendments permit a fund to exclude securities subject to an unconditional demand feature from the rule's issuer diversification standards if the demand feature is issued by a ''non-controlled person.'' [10] Because of the significance of demand features to a fund, the March Amendments provide that a demand feature is not eligible for fund investment unless (i) the demand feature (or provider of the demand feature) is rated by an NRSRO (''Rating Requirement''); [11] and (ii) arrangements are in place for a fund holding a security subject to a demand feature to be given notice in the event of a change in the identity of the issuer of the demand feature (''Notification Requirement'').[12]

Money market funds frequently invest in securities subject to financial guarantee (bond) insurance, letters of credit (''LOCs'') and other types of unconditional credit enhancements that may not fall within the definition of ''unconditional demand feature'' under the rule. As a result, for purposes of the rule, a fund holding securities subject to these types of unconditional credit enhancements may not be able to rely exclusively on the credit quality of the credit enhancement provider in determining the credit quality of the security, and may not exclude such securities from rule 2a–7's issuer diversification requirements. Industry participants have noted that the rule's treatment of securities subject to unconditional credit enhancements that do not fall within the definition of ''demand feature'' does not reflect the manner in which the financial markets treat these securities. Securities of this type typically trade on the basis of the credit quality of the provider of the credit enhancement.

The Commission is proposing amendments to rule 2a–7 that would modify the rule's credit quality standards to permit a fund to rely solely on the credit quality of the issuer of a guarantee in determining the credit quality of the security.[13] Accordingly, (i) the exclusion from the issuer diversification standards for securities subject to unconditional demand features from a non-controlled person would be expanded to include all securities subject to guarantees from a non-controlled person,[14] (ii) the Rating Requirement would be extended to all guarantees (with certain exceptions),[15] and (iii) the Notification Requirement would be extended to all guarantees for which substitution is permissible.[16]

c. Rating Requirement for Guarantees

The March Amendments to rule 2a–7 limit a money market fund to investing in securities subject to demand features (whether conditional or unconditional) that have received a short-term rating from an NRSRO.[17] The Commission explained that it believed that such a requirement would provide a degree of additional protection by ensuring input into the minimal credit risk determination from an outside source.[18] Because most banks and other institutions issuing demand features are rated, the Commission concluded that obtaining a rating was not an unreasonable or a burdensome requirement for an institution that is in the business of lending its credit and would not significantly diminish the supply of available, high quality, eligible securities.

As noted above, the Commission is proposing to extend the Rating Requirement to guarantees,[19] and to modify this requirement in three other respects: [20]

- Conditional demand features would be exempted from the Rating

[5] Paragraph (a)(16) of rule 2a–7 defines the term ''put'' to mean the right to sell a specified underlying security within a specified period of time and at a specified exercise price that may be sold, transferred, or assigned only with the underlying security.

[6] Paragraph (a)(27) of rule 2a–7 defines the term ''unconditional put'' to mean a put (including any guarantee, financial guarantee (bond) insurance, letter of credit or similar unconditional credit enhancement) that by its terms would be readily exercisable in the event of default in payment of principal or interest on the underlying security or securities.

[7] Paragraph (a)(14) of rule 2a–7, as proposed to be amended. The term ''guarantee'' would be defined to include an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the guarantee (if required), principal plus accrued interest when due upon default. This definition is for purposes of rule 2a–7 only, and is not intended to have any effect on the status of these investments under other provisions of the 1940 Act or under the other federal securities laws.

[8] Paragraph (a)(7) of rule 2a–7 defines the term ''demand feature'' to mean (i) a put that may be exercisable either: (A) at any time on no more than 30 calendar days' notice; or (B) at specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice; or (ii) a feature permitting the holder of an asset backed security unconditionally to receive principal and interest within thirteen months of making demand. An unconditional demand feature is a demand feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities. See paragraphs (a)(25) and (a)(27) of rule 2a–7 (definitions of ''unconditional demand feature'' and ''unconditional put'').

[9] Paragraph (c)(3)(ii) of rule 2a–7. This provision was added to the rule in 1986. See Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies, Investment Company Act Release No. 14983 (March 12, 1986) [51 FR 9773 (March 21, 1986)].

[10] Paragraphs (c)(4)(i), (c)(4)(ii) and (c)(4)(iv) of rule 2a–7. The term ''unconditional demand feature issued by a non-controlled person'' is defined in paragraph (a)(26) of rule 2a–7.

[11] Paragraph (a)(9)(iii)(D)(1) of rule 2a–7.

[12] Paragraph (a)(9)(iii)(D)(2) of rule 2a–7.

[13] Paragraph (c)(3)(iii) of rule 2a–7, as proposed to be amended. Proposed amendments to the rule's credit quality provisions would reflect proposed amendments to other provisions of the rule by permitting a fund that holds a security that is subject to a guarantee and a conditional demand feature to substitute the rating of the guarantee for the rating of the underlying security. Paragraph (c)(3)(iv)(C) of rule 2a–7, as proposed to be amended. Consistent with the current rule, the fund would continue to be required to consider the rating of the conditional demand feature in evaluating the credit quality of the entire instrument. Paragraph (c)(3)(iv)(A) of rule 2a–7, as proposed to be amended.

[14] Paragraph (c)(4)(i) of rule 2a–7, as proposed to be amended. The term ''guarantee issued by a non-controlled person'' is defined in paragraph (a)(15) of rule 2a–7, as proposed to be amended.

[15] Paragraph (a)(10)(iii)(A) of rule 2a–7, as proposed to be amended. *See, infra* Section I.B.1.c. of this Release for a description of other proposed amendments to the Rating Requirement.

[16] Paragraph (a)(10)(iii)(B) of rule 2a–7, as proposed to be amended.

[17] See paragraph (a)(9)(iii)(D)(1) of rule 2a–7 (definition of ''eligible security''). Securities subject to demand features issued on or before June 3, 1996 were ''grandfathered,'' and are not required to be rated. Release 21837, supra note 1 at Section V.B. The June 3 ''grandfathering date'' was suspended until the Commission adopts the technical amendments proposed for comment in this release. See Compliance Date Release, supra note 4.

[18] Release 21837, supra note 1, at Section II.C.2.a.

[19] See, supra Section I.B.1.b. of this Release.

[20] See paragraph (a)(10)(iii)(A) of rule 2a–7, as proposed to be amended.

Requirement.[21] Conditional demand features do not act as a complete credit substitute for the credit quality of the underlying security, and a fund should be able, with relative ease, to substitute a new provider of a conditional guarantee for an existing provider that is experiencing credit problems.

- Any rating from an NRSRO (rather than only a short-term rating) would satisfy the Rating Requirement. A long-term rating would satisfy the primary objective of the Rating Requirement, which is to ensure input into the minimal credit risk determination by an outside source.[22] In addition, the long-term rating assigned to a guarantee may be relevant to a fund in evaluating the ability of the guarantor to perform under the terms of the guarantee.[23]
- A guarantee issued by a person that is controlled by, controls, or is under common control with the issuer of the security would be excepted from the Rating Requirement. An entity that guarantees a security issued by a controlled person may not be in the business of lending its credit, and such a requirement may by burdensome and result in a diminished supply of high quality, eligible securities.[24]

d. Demand Features and Guarantees Not Relied Upon

The March Amendments permit a fund that is not relying on a particular put for satisfaction of the rule's credit quality or maturity standards, or for liquidity, to exclude that put in determining its compliance with the rule's put diversification standards.[25] The Commission is proposing amendments to the rule that would provide that a demand feature or guarantee that is not relied upon to satisfy the rule's credit quality or diversification standards, or for liquidity, is not subject to any of the rule's requirements.[26]

2. Diversification and Quality Standards Applicable to Issuers

a. Second Tier Securities

The proposed amendments would clarify the scope of the issuer diversification standards applicable to taxable fund investment in second tier securities, and tax exempt fund investment in second tier conduit securities. Under rule 2a–7, a taxable fund may not invest more than one percent of its total assets in second tier securities issued by a single issuer, and a tax exempt fund may not invest more than one percent of its total assets in second tier conduit securities issued by a single issuer.[27] Proposed amendments to the rule's issuer diversification provisions would clarify that these limits are not applicable to securities subject to a guarantee issued by a non-controlled person.[28] Accordingly, such securities would only be subject to the rule's guarantee diversification requirements.[29]

b. Repurchase Agreements

Rule 2a–7 allows a fund to ''look through'' a repurchase agreement (''repo'') to the underlying collateral and thereby ignore the counterparty in determining compliance with the rule's diversification limitations when the obligation of the counterparty is ''collateralized fully.'' [30] A repo is collateralized fully if, among other things, it is collateralized by Government securities or other securities listed in the rule that permit the repo to receive favorable treatment under applicable bankruptcy law. This provision of the rule is intended to ensure that the securities collateralizing the repo can be liquidated promptly in the event of the bankruptcy of the counterparty. Since the publication of the March Amendments, numerous questions have been raised concerning the eligibility of cash and certain types of securities that, although not listed in the rule, may (or may not) constitute appropriate collateral to avoid a stay in the event of a bankruptcy.[31]

Although the determination of how a bankruptcy court might treat a repo is highly relevant for ''look through'' treatment under rule 2a–7, the Commission believes that specifying the types of collateral that meet the criteria of relevant provisions of bankruptcy law in rule 2a–7 is unnecessary to fulfill the underlying purposes of the rule. Therefore, the Commission is proposing to revise the rule to omit references to specific types of acceptable collateral. Under the proposed provision, a repo would be ''collateralized fully'' if (i) the collateral consists entirely of cash, Government securities, or other securities that are rated in the highest rating category by the requisite NRSROs, *and* (ii) upon an event of insolvency with respect to the seller, the repo would qualify under a provision of applicable insolvency law providing an exclusion from any general stay of creditors' rights against the seller.[32]

[21] The proposed definition of the term ''guarantee'' does not include conditional demand features. See paragraph (a)(14) of rule 2a–7, as proposed to be amended.

[22] Release 21837, supra note 1, at Section II.C.2.a.

[23] For example, a rating representing the long-term creditworthiness of a guarantor may be significant to a fund holding a long-term security subject both to a conditional demand feature that is relied upon to shorten the maturity of the underlying security and a guarantee. See paragraphs (c)(3)(iv)(A) and (c)(3)(iv)(C) of rule 2a–7, as proposed to be amended (a long-term security subject to a conditional demand feature is an eligible security only if the conditional demand feature is an eligible security, and the underlying security (or any guarantee of the underlying security) has received a short-term or long-term rating from the requisite NRSROs within the two highest short-term or long-term rating categories).

[24] The proposed amendments also would have the effect of exempting issuer-provided demand features from the Rating Requirement. This proposed provision is consistent with those provisions of the March Amendments that permit a fund to disregard issuer-provided demand features in determining its compliance with the rule's put diversification requirements. Paragraph (c)(4)(vi)(B)(*1*) of rule 2a–7; See Release 21837, supra note 1, at Section II.C.1.c (securities subject to ''issuer-provided demand features can be viewed as the functional equivalent of short-term securities that are 'rolled over' periodically.'').

[25] Paragraph (c)(4)(vi)(B)(*4*) of rule 2a–7.

[26] Paragraph (c)(5) of rule 2a–7, as proposed to be amended. This proposed amendment would codify a staff interpretive position. Q&A Letter, *supra* note 3, at Q&A 2 (a put that is not relied upon may be disregarded for all purposes under the rule, including the Rating Requirement, and provisions of the rule that require the fund's board of directors to reduce investment in securities subject to downgraded demand features absent a finding). A fund holding securities subject to demand features or guarantees that the fund's board of directors has determined are not being relied upon would be required to establish written procedures requiring periodic re-evaluations of this determination. Paragraph (c)(8)(ii) of rule 2a–7 (paragraph (c)(9)(ii) of rule 2a–7 as proposed to be amended).

[27] Paragraphs (c)(4)(iv)(A)(*1*) and (c)(4)(iv)(B)(*1*) of rule 2a–7.

[28] Paragraphs (c)(4)(i)(C)(*1*) and (c)(4)(i)(C)(*2*) of rule 2a–7, as proposed to be amended. Rule 2a–7 also limits a taxable fund and a tax exempt fund to investing no more than five percent of total assets in second tier securities and second tier conduit securities respectively. See paragraphs (c)(4)(iv)(A)(*2*) and (c)(4)(iv)(B)(*2*) of rule 2a–7 (''five percent quality test''). The proposed amendments would not make any substantive changes to the five percent quality test, and thus a taxable fund, for example, could not invest more than five percent of its total assets in second tier securities subject to a second tier demand feature. The proposed amendments would reorganize the rule text by including the five percent quality test in the paragraph of the rule that addresses portfolio quality, rather than portfolio diversification. See paragraph (c)(3)(ii) of rule 2a–7, as proposed to be amended (portfolio quality—second tier securities).

[29] Paragraphs (c)(4)(i) and (c)(4)(iii) of rule 2a–7, as proposed to be amended.

[30] Paragraphs (a)(4) and (c)(4)(vi)(A)(*1*) of rule 2a–7.

[31] See, e.g., Q&A Letter, supra note 3, at Q&A 12.

[32] Paragraphs (a)(5)(iv) and (a)(5)(v) of rule 2a–7, as proposed to be amended. In addition, a money market fund must evaluate the repo counterparty's creditworthiness in order to minimize the risk that money market funds do not enter into repos with parties that present a serious risk of becoming involved in bankruptcy proceedings. The Commission previously published a release setting forth the conditions under which the Division of Investment Management would not recommend enforcement action under Section 12(d)(3) of the 1940 Act if an investment company entered into a repo with persons engaged in securities-related businesses. Securities Trading Practices of Registered Investment Companies, Investment Company Act Release No. 13005 (Feb. 2, 1983) [48

Continued

Under the proposed amendments, a fund entering into a repo collateralized by traditional types of Government securities (as most do) could conclude easily that the repo qualifies for ''look through'' treatment (assuming other requirements of the rule are met), while funds wishing to enter into repos using less traditional forms of collateral may rely on opinions of bankruptcy counsel.

c. Refunded Securities

The March Amendments permit a fund to ''look through'' refunded securities [33] to the escrowed securities in determining its compliance with the rule's issuer diversification standards under certain conditions, one of which is that an independent public accountant has certified that the escrowed Government securities, or any subsequent substitution of the escrowed securities, will satisfy all payments of principal, interest and applicable premiums on the refunded securities (collectively, the ''accountant's certifications'').[34] NRSROs in rating refunded securities typically require an independent third party to make the same determination.[35] Therefore, the Commission is proposing to provide that the accountant's certifications need not be obtained if, in connection with the placement of Government securities into the escrow account, the refunded securities have received a rating from an NRSRO in the highest category for debt obligations.[36]

d. Three-Day Safe Harbor

Rule 2a–7 permits a taxable or national fund to invest up to twenty-five percent of its total assets in the first tier securities of a single issuer for up to three business days (''three-day safe harbor'').[37] The proposed amendments restore unintentionally omitted language stating that a fund may not make more than one investment at any time during the three day period.[38]

3. *Asset Backed Securities and Synthetic Securities*

a. Rating Requirement

The March Amendments provide separate credit quality, diversification and maturity standards for asset backed securities and synthetic securities (collectively, ''ABSs''). The amendments provide that an ABS is not an eligible security unless it has received a rating from an NRSRO. The ABS covered by the rule include interests in pools of receivables, such as credit card debt, as well as short-term synthetic tax exempt securities.[39] The Commission adopted the rating requirement because an NRSRO rating would ensure that an independent legal, structural and credit analysis of the ABS had taken place. In addition, the Commission stated that, in light of the role that the NRSROs have played in the development of structured finance, a rating requirement should not be burdensome.[40]

The Commission is proposing to modify the rating requirement for ABS to exempt from the rating requirement any ABS substantially all the qualifying assets of which consist of the obligations of one or more municipal issuers.[41] In proposing the rating requirement for ABSs, the Commission noted that when an ABS consists of a large pool of financial assets, such as credit card receivables or mortgages, the ABS may not be susceptible to conventional means of credit risk analysis because credit quality is based not on a single issuer but an actuarial analysis of a pool of financial assets.[42] Industry participants have suggested that this is usually not the case with respect to synthetic structures and municipal pools, whose qualifying assets generally consist of no more than a few municipal issuers (or, in the case of some pools, several municipalities located in a particular state). Thus, the credit analysis for these structures is typically no different than that required for a security directly issued by the municipality.[43]

The Commission is also proposing to revise the rule to clarify that, consistent with other proposed provisions of the rule, an ABS subject to a guarantee (which generally would be required to rated [44]), would itself not be required to be rated by an NRSRO.[45] Under the proposed amendments, a fund holding an ABS fully supported by a guarantee would be permitted to substitute the credit quality of the guarantee in determining the credit quality of the ABS,[46] and to exclude the ABS in determining its compliance with the rule's issuer diversification standards.[47]

b. Diversification Standards

The March Amendments treat the special purpose entity as the issuer of the ABS and therefore require that rule 2a–7's diversification standards be met with respect to the special purpose entity. The amendments create an exception to this treatment, however, requiring a fund to ''look through'' the special purpose entity to any issuer of qualifying assets whose obligations constitute ten percent or more of the principal amount of the qualifying assets of the special purpose entity (''ten percent obligor'').[48] For diversification purposes, a fund is required to treat these ten percent obligors as if they issued a proportionate amount of the special purpose entity.[49]

Some or all of the qualifying assets of certain ABSs (''primary ABSs'') also consist of other ABSs (''secondary ABSs''). The proposed amendments would clarify that a ten percent obligor that is also the issuer of secondary ABSs would be deemed to have issued a portion of the assets of the primary ABS that such secondary ABSs represent. For purposes of identifying ten percent obligors, the proposed amendments would provide that a fund should

FR 5824 (Feb. 9, 1983)] (''Repo Release''). One of the conditions stated in the Repo Release was that the repo be ''fully collateralized,'' although a description of ''fully collateralized'' did not include all of the conditions in rule 2a–7, as amended by the March Amendments. A money market fund entering into a repo that is ''collateralized fully'' within the meaning of paragraph (a)(4) of rule 2a–7 (paragraph (a)(5) of rule 2a–7, as proposed to be amended) would meet the ''fully collateralized'' requirement of the Repo Release. Investment companies other than money market funds are not required to comply with this provision of rule 2a–7 to avoid violating Section 12(d)(3).

[33] Paragraph (a)(18) of rule 2a–7 generally defines ''refunded securities'' as securities whose payment is funded and secured by Government securities placed in an escrow account.

[34] Paragraphs (a)(18)(ii), (a)(18)(iii) and (c)(4)(vi)(A)(*2*) of rule 2a–7.

[35] *See, e.g.*, Standard & Poor's Municipal Finance Criteria, 176–177 (1996).

[36] Paragraph (a)(19)(iii) of rule 2a–7, as proposed to be amended.

[37] Paragraph (c)(4)(iii) of rule 2a–7 (paragraph (c)(4)(i)(A) of rule 2a–7, as proposed to be amended). Because single state funds are required to be diversified only as to seventy-five percent of their assets, they have available a twenty-five percent basket to accommodate purchases in excess of five percent. Paragraph (c)(4)(ii) of rule 2a–7 (paragraph (c)(4)(i)(B) of rule 2a–7, as proposed to be amended). As a result, the three-day safe harbor of rule 2a–7 is not available for single state funds.

[38] Paragraph (c)(4)(i)(A) of rule 2a–7, as proposed to be amended.

[39] Synthetic securities are described in Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] (''Release 19959'') at Section II.C.4.

[40] Release 21837, *supra* note 1 at Section II.E.4.

[41] Paragraph (a)(10)(ii)(B) of rule 2a–7, as proposed to be amended.

[42] Release 19959, *supra* note 39, at text accompanying n.111.

[43] Industry representatives have also suggested that because many synthetics are not rated, the rating requirement may restrict available supply. ABSs that involve the securitization of financial assets, on the other hand, are typically rated, and the rating requirement does not impose any unnecessary burden.

[44] Paragraph (a)(10)(iii)(A) of rule 2a–7, as proposed to be amended.

[45] Paragraph (a)(10)(ii)(B) of rule 2a–7, as proposed to be amended.

[46] Paragraph (c)(3)(iii) of rule 2a–7, as proposed to be amended.

[47] Paragraph (c)(4)(i) of rule 2a–7, as proposed to be amended.

[48] Paragraph (c)(4)(vi)(A)(*4*) of rule 2a–7.

[49] *Id.*; Paragraph (c)(4)(ii)(D)(*1*) of rule 2a–7, as proposed to be amended.

continue down the chain of ten percent obligors until a special purpose entity with no ten percent obligors is reached.[50] Finally, the Commission is proposing to clarify that in the case of the obligations of a ten percent obligor that are treated as being held directly by the fund, any demand features and guarantees supporting the obligations are treated as being held by the fund and should be subject to the rule's demand feature and guarantee diversification tests.[51] Comment is requested on the proposed amendments.

Some industry participants have raised concern about the ABS diversification test because a fund could invest more than ten percent of its total assets in ABSs issued by a special purpose entity with one or more ten percent obligors.[52] A fund's investment of a significant portion of its total assets in a single ABS might expose the fund and investors to an undue amount of structural risk (*e.g.*, the risk that the special purpose entity might be affected by the bankruptcy of the sponsor). Comment is requested whether the rule should restrict direct and indirect fund investment in the obligations of a single special purpose entity to a specified percentage of fund assets (*e.g.*, ten percent of fund assets).

c. Demand Features and Guarantees

Under rule 2a–7, a fund holding an ABS subject to a demand feature from a controlled person is subject to the rule's ten percent diversification limitation applicable to demand features and puts, and thus may not be able to include this investment in its ''twenty-five percent basket.'' [53] The sponsor of an ABS may own residual interests in the special purpose entity, in which case the sponsor may ''control'' the special purpose entity within the meaning of section 2(a)(9) of the 1940 Act.[54]

The Commission restricted fund use of the twenty-five percent basket to non-controlled persons to minimize a fund's concentration of assets in a single economic enterprise.[55] This provision of the rule, then, was designed to limit a fund's aggregate exposure to the risks of related, active businesses. Permitting a fund to invest more than five percent of its total assets in an ABS subject to a demand feature provided by a sponsor, however, would not have this effect, because the special purpose entity, unlike an active enterprise, is a limited purpose vehicle created solely for the purpose of issuing fixed income securities based on the cash flow of the qualifying assets. The Commission is therefore proposing amendments to the definitions of ''demand feature issued by a non-controlled person'' and ''guarantee issued by a non-controlled person'' to include sponsors of special purpose entities.[56] The effect of such an amendment would be to permit a fund holding an ABS to include any sponsor-provided demand feature or guarantee in the twenty-five percent basket.[57]

d. Asset Backed Securities: Other Issues

Some types of ABSs may consist of qualifying assets whose cash flow has been ''swapped'' to a financial institution that ultimately acts as the primary source of payment to funds holding the ABSs. In these circumstances, it may be appropriate for the fund to treat the financial institution as the issuer of the ABSs under the rule's diversification tests, because the fund is relying on the creditworthiness of that institution. Comment is requested on whether and how the rule should be amended to address swaps and similar arrangements.

4. Other Proposed Amendments

a. Definition of Eligible Security—Certain Unrated Securities

Rule 2a–7 provides that an unrated security that, when issued was a long-term security but when purchased by the fund had a remaining maturity of less than 397 calendar days, may be considered to be an eligible security based on whether the security is comparable in quality to a rated security, unless the security has received a long-term rating from any NRSRO that is not within the three highest categories of long-term ratings.[58] Proposed amendments to the rule permit a fund to treat such a security as an eligible security if that security had a long-term rating from the requisite NRSROs [59] within the three highest rating categories.[60]

b. Acquisition of Portfolio Securities

Several provisions of the rule that are applicable to the purchase of portfolio securities refer to the purchase or

[50] Paragraphs (c)(4)(ii)(D)(*1*) and (c)(4)(D)(ii)(*2*) of rule 2a–7, as proposed to be amended. The proposed amendments reflect the approach illustrated in materials prepared by the staff of the Division of Investment Management. *See* Materials for 1996 ICI Conference on Money Market Fund Regulation: Asset Backed Securities and Synthetic Securities—Application of Paragraph (c)(4)(vi)(A)(*4*) of Rule 2a–7 (May 9, 1996) (copies available upon request). Some industry participants have urged that the rule's diversification requirements be amended to require money market funds to look through to the receivables underlying asset backed securities, and have maintained that a fund holding an asset backed security is exposed only to the credit quality of the ultimate obligors and not the special purpose entity. The Commission is not proposing to follow this approach for several reasons. First, the status of an ABS as an eligible investment for a money market fund is not based on the creditworthiness of each obligor, but rather on the creditworthiness of the entire pool of assets, which typically is evaluated and rated based on the actuarial experience of similar pools with similar features (such as an overcollateralization). Second, applying the rule's diversification tests to the ultimate obligors of an ABS could permit a fund to invest a significant percentage of its total assets in a single ABS. Third, the suggested approach would create significant administrative burdens on funds that purchase ABSs, because the funds would have to identify and monitor *each* obligor (or each guarantor of each obligor), and determine whether the value of these obligations, together with any other securities issued by that obligor that the funds hold directly or propose to acquire, would exceed the applicable diversification requirements.

[51] Paragraph (c)(4)(ii)(D)(3) of rule 2a–7, as proposed to be amended.

[52] For example, a fund could invest fifty percent of its total assets in ABSs issued by a special purpose entity whose qualifying assets consist of the obligations of ten individual ten percent obligors. Under the rule's diversification tests, each ten percent obligor would be deemed to be the issuer of five percent of the fund's total assets [(ten percent obligation) x (fifty percent investment)]. This result would be technically consistent with the diversification provisions of the rule, even though such an investment would expose fifty percent of the fund's total assets to the structural risk inherent in the special purpose entity issuing the ABSs.

[53] The diversification standards applicable to puts under rule 2a–7 apply with respect to seventy-five percent of a fund's total assets—a fund need not comply with the rule's put diversification standards with respect to the remaining twenty-five percent of its total assets (''twenty-five percent basket'') as long as: (1) the fund holds securities in the basket that are subject to, or issued by, providers of puts that are first tier securities; and (2) the puts held in the basket are puts issued by non-controlled persons. *See* paragraphs (a)(17) (definition of ''put issued by a non-controlled person'') and (c)(4)(v) of rule 2a–7.

[54] Section 2(a)(9) of the 1940 Act defines ''control'' to mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five per centum of the voting securities of a company is presumed to control such company.

[55] Release 21837, *supra* note 1, at Section II.C.1.b.

[56] Paragraphs (a)(9) and (a)(15) of rule 2a–7, as proposed to be amended.

[57] Another effect would be that a sponsor-provided guarantee would be subject to the rating requirement for guarantees. *See supra* Section I.B.1.c of this Release (a guarantee issued by a non-controlled person is subject to the rating requirement described therein).

[58] Paragraph (a)(9)(iii)(B) of rule 2a–7.

[59] The term ''requisite NRSROs'' is defined in paragraph (a)(19) of rule 2a–7 (paragraph (a)(20) of rule 2a–7, as proposed to be amended) to mean: (i) any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or (ii) if only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund purchases or rolls over the security, that NRSRO.

[60] Paragraph (a)(10)(ii)(A) of rule 2a–7, as proposed to be amended. To eliminate duplicative text in the definitions of ''eligible security,'' ''first tier security'' and ''unrated security,'' the proposed amendments would delete subparagraph (ii) from each definition. See paragraphs (a)(10), (a)(12) and (a)(27) of rule 2a–7, as proposed to be amended.

''rollover'' of the security;[61] some refer only to the purchase[62] or acquisition[63] of a security by the fund.[64] To make the rule more uniform, and to clarify that the failure of a fund to exercise a demand feature does not have similar consequences under the rule as a decision to rollover commercial paper, the proposed amendments would add to the rule the defined term ''acquisition,'' which would include a rollover of a security (but not the exercise of a demand feature.)[65]

c. Single State Funds

The March Amendments provide that a single state fund is limited to investing no more than five percent of its assets in the securities of a single issuer (other than Government securities), but only with respect to seventy-five percent of its total assets. The remaining twenty-five percent of a single state fund's assets (''twenty five percent basket'') may be invested in the securities of one or more issuers, provided they are first tier securities.[66] The March Amendments define a single state fund as a tax exempt fund that holds itself out as primarily distributing income exempt from the income taxes of a specified state or locality.[67] Since the adoption of the March Amendments, the Commission has become aware that a few money market funds whose investment objectives are to distribute income exempt from the income taxes of a particular state cannot hold themselves out as single state funds because they may not primarily distribute such income. The proposed amendments would modify the current definition by permitting a fund to qualify as a single state fund, and make use of the twenty-five percent basket, if it holds itself out as seeking to maximize the amount of its distributed income that is exempt from the income taxes or other taxes on investments of a particular state.[68]

d. Standby Commitments

Under the rule, a ''standby commitment'' is defined as a put that entitles the holder to same day settlement,[69] and may be purchased by the fund only if the board (or its delegate) finds that the issuer presents minimal credit risks.[70] The Commission is proposing to delete the definition of ''standby commitment'' and all references thereto from the rule. Changes to other definitions make the use of this term in the rule unnecessary; a standby commitment that falls within the definition of a demand feature would be treated as a demand feature under the rule. Standby commitments that do not fall within the definition of demand feature could not act as a substitute for the credit quality, and could not be relied upon to shorten the maturity of the security, would not expose the fund to any significant risks with respect to the issuer of the standby commitment, and thus would not be subject to any of the rule's quality or diversification requirements.[71] Comment is requested on the proposed amendment.

e. Downgrades, Defaults and Other Events

Proposed amendments to rule 2a–7 would clarify that a fund's investment adviser (or other person) is required to reassess whether an unrated security or a second tier security continues to present minimal credit risks to the fund when it becomes aware that the security has been downgraded by any NRSRO below that NRSRO's two highest short-term rating categories.[72] This amendment would eliminate any confusion caused by the language of the rule, as amended by the March Amendments, that some industry participants have suggested could be read to require such a reassessment upon assignment of any rating below the two highest rating categories, whether short-term or long-term.

f. Recordkeeping Requirements

The Commission is proposing amendments to the rule's recordkeeping and procedural requirements. First, the proposed amendments would replace certain rule text inadvertently omitted and restore the requirement that a fund's board of directors (or its delegate) document the minimal credit risk determination with respect to all securities in the fund's portfolio.[73] Second, the proposed amendments would clarify that a fund would not be required to establish procedures concerning demand features and guarantees not relied upon if it does not hold such instruments.[74] Finally, proposed amendments to the procedures concerning these securities reflect modifications to the diversification test for asset backed securities.[75]

g. Investment Companies Holding Themselves Out as Money Market Funds

Paragraph (b) of rule 2a–7 provides that it is ''an untrue statement of material fact'' for a registered investment company to use ''money market'' or a similar term as part of its name, or to hold itself out to investors as a money market fund or its equivalent unless the fund meets the risk-limiting conditions of rule 2a–7. Proposed amendments to paragraph (b) of the rule would restate, using additional rulemaking authority recently provided to the Commission,[76] the rule's prohibition on the use of a name by an investment company that would suggest the company is a money market fund, unless that company is a money market fund that operates in compliance with the rule.[77]

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[61] See, e.g., paragraph (a)(19) of rule 2a–7 (definition of ''requisite NRSROs'').

[62] See, e.g., paragraph (c)(3)(iii) of rule 2a–7 (securities subject to conditional demand features).

[63] See, e.g., paragraphs (c)(3)(i) (portfolio quality—general); (c)(4)(i) (issuer diversification—taxable and national funds); (c)(4)(ii) (issuer diversification—single state funds); (c)(4)(v) (put diversification); and (c)(5)(i)(A)(*2*) (downgrade of unrated security or second tier security held by the fund) of rule 2a–7.

[64] See also paragraph (c)(4)(iv) of rule 2a–7 (diversification tests applicable to second tier securities—references to ''acquisition'' and ''rollover'' but not to ''purchase'').

[65] Paragraph (a)(1) of rule 2a–7, as proposed to be amended.

[66] Paragraph (c)(4)(ii) of rule 2a–7.

[67] Paragraph (a)(21) of rule 2a–7.

[68] Paragraph (a)(22) of rule 2a–7, as proposed to be amended.

[69] Paragraph (a)(22) of rule 2a–7.

[70] Paragraph (a)(9)(iii)(A) of rule 2a–7.

[71] In the 1985 release proposing amendments to rule 2a–7, the Commission explained that a fund usually pays nothing or only a nominal consideration for a standby commitment, and the commitment may be ''exercised only as a last resort, because the broker, dealer, or other financial institution [providing the standby commitment] would suffer a loss on the transaction if the exercise price is greater than the market value of the underlying securities at the time of exercise.'' Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies, Investment Company Act Release No. 14607 (July 1, 1985) (50 FR 27982 (July 9, 1985)). If there is a practical, contractual or other impediment to its exercise, a standby commitment would not be a ''demand feature'' under rule 2a–7 because it is not readily exercisable at the time intervals specified in paragraph (a)(7) of the rule.

[72] Paragraph (c)(6)(i)(A)(*2*) of rule 2a–7, as proposed to be amended.

[73] Paragraph (c)(10)(iii) of rule 2a–7, as proposed to be amended.

[74] Paragraph (c)(9)(ii) of rule 2a–7, as proposed to be amended.

[75] Paragraphs (c)(9)(iv) and (c)(10)(v) of rule 2a–7, as proposed to be amended.

[76] The National Securities Markets Improvement Act of 1996 (Pub. L. No. 104–290) amended Section 35(d) of the 1940 Act to provide that ''[i]t shall be unlawful for any registered investment company to adopt as a part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission is authorized, by rule or regulation, or order, to define such names and titles as are materially deceptive and misleading.''

[77] Paragraph (b) of rule 2a–7, as proposed to be amended.

II. Proposed Amendments to the Advertising Rules

The Commission is also proposing to amend the Commission's advertising rules to clarify the formula used by money market funds to calculate yield and to seek to ensure that investors are not confused by presentation of a money market fund's short-term total return in lieu of its yield.

A. Calculation of Yield

The Commission adopted a uniform method of calculating money market fund yield in 1980 that explicitly limited income reflected in yield to investment income.[78] In 1983, the Commission revised the formula to correct a flaw in the formula at which time the limitation on investment income was unintentionally omitted.[79] Recently, questions have been raised regarding the inclusion of income other than investment income in the advertised yield of a money market fund. To resolve such questions, the Commission is proposing to amend the formula to clarify that income included in yield is limited to investment income.[80]

B. Use of Total Return

Some money market funds, instead of advertising their performance by quoting a seven-day yield calculated in accordance with Commission rules, have used quotations of total return covering short periods of time. Even though sales material may properly identify the performance figure as ''total return,'' the Commission is concerned that many investors will not recognize the distinction or, if they do, will not appreciate the difference between total return and yield. As a result, investors may assume incorrectly that a fund quoting the higher total return figure is a better performing fund than the other money market funds quoting yield.[81] In addition, investors may incorrectly assume that the higher ''total return'' is the yield they can expect to receive upon an investment in the fund.

In seeking to ensure that the distinction between money market fund yields and short-term total return is clear, the Commission is proposing to amend rules 482 under the Securities Act of 1933 and 34b–1 under the 1940 Act to require that total return used in advertisements and sales literature cover a period of at least one year. In addition, the Commission is proposing to require that quotations of total return in advertisements and sales literature be accompanied by a quotation of current yield, computed in accordance with Commission rules, and set forth with equal prominence.

III. Request for Comment

In connection with its review of the rules and forms regulating money market funds, the staff has become aware of a fund sponsor that established a program linking a money market fund with a debit card available for use by the fund's shareholders. Under the program, rebates earned by the fund on credit card transactions entered into by the fund's shareholders are distributed to the shareholders in the form of income.[82] This type of income is not investment income and its inclusion in the money market fund's standardized yield is not permitted.[83] The Commission solicits comment on an appropriate method for disclosing, in connection with performance information, these rebate amounts and other types of arrangements involving non-investment income. For example, should a fund be able to advertise a separate rate of return (as a percentage) for the rebate feature covering the same period of time as the standardized yield?

IV. Transition Period

The release adopting the March Amendments provided that money market funds would be required to comply with certain of the amendments by October 3, 1996, which was approximately six months from the date of publication of the March Amendments in The Federal Register.[84] On August 13, 1996, the Commission suspended the compliance date for the March Amendments until the final version of these proposed amendments is published in The Federal Register.[85] Comment is requested on an appropriate compliance date for these technical amendments, and whether the release adopting these technical amendments should provide for a compliance period of comparable length to that of the March Amendments.

V. Cost/Benefit Analysis

The proposals discussed above constitute refinements to the rules regulating money market funds, and would not increase costs for money market funds, their advisers, or other market participants. The proposed technical amendments would clarify the application of the quality and diversification tests under rule 2a–7 consistent with investor protection. The Commission requests specific comment on its assessment of the costs and benefits associated with the proposal, including specific estimates of costs and benefits.

VI. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted proposed amendments to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The title for the collection of information is ''Rules Regulating Money Market Funds.'' The Supporting Statement to the Paperwork Reduction Act submission notes that, because the proposed technical amendments to rule 2a–7 would clarify existing reporting and recordkeeping obligations, it is estimated that they would have no effect on the annual reporting burden of money market funds. The Supporting Statement also notes that the proposed

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[78] Advertising by Investment Companies, Investment Company Act Release No. 11379 (Sept. 30, 1980) [45 FR 67079 (Oct. 9, 1980)].

[79] ''Money Market'' Funds' Inclusion of a Standardized Yield Computation in Prospectuses, Investment Company Act Release No. 13049 (Feb. 28, 1983) [48 FR 10297 (Mar. 11, 1983)]. In this release, the Commission stated that ''limiting the yield to net *investment income* better indicates the earning potential of a fund's portfolio and thus both promotes comparability of yield and reduces the potential for misleading investors.* * *'' (Emphasis added.)

[80] The proposed amendments would revise Item 22 of Form N–1A [17 CFR 239.15A and 274.11A], Item 25 of Form N–3 [17 CFR 239.17a and 274.11b], and Item 21 of Form N–4 [17 CFR 239.17b and 274.11c].

[81] This practice typically occurs during a period of declining interest rates when the fund's total return will be higher than its current yield because it will include periods of time during which the fund held higher yielding securities. It may also occur in order to avoid the limitation on income included in yield to investment income. *See* discussion supra.

[82] *See* Robert D. Hershy, Jr., *Sophia Collier, Soda Entrepreneur, Uncorks a Money Market Fund,* N.Y. Times, at sec. 3, p. 11.

[83] Such funds clearly can, however, for example, advertise the dollar value of the rebate, or specify the dollar amounts received per certain dollars invested in the fund over some stated period of time.

[84] Release 21837, supra note 1, at Section V.B.

[85] Compliance Date Release, *supra* note 4. The March Amendments clarified that floating rate and variable rate securities (''adjustable rate securities'') must reasonably be expected to have market values that approximate their amortized cost values on each interest rate adjustment date through their final maturity dates. *See* Release 21837, *supra* note 1, at Section II.F.4 and paragraphs (a)(12) and (a)(30) of rule 2a–7 (definitions of ''floating rate security'' and ''variable rate security''). Because these provisions of the March Amendments merely clarified the application of existing provisions of the rule, whether a fund or its adviser must reasonably expect the market value of an adjustable rate security to approximate its amortized cost value was not affected by the Compliance Date Release.

amendments to the advertising rules would not impose any new paperwork burden on money market funds because the majority of money market funds do not include income other than investment income in calculating their yield, and do not advertise total return based on short periods of time.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments concerning: whether the proposed collection of information is necessary for the proper performance of the function of the Commission, including whether the information shall have practical utility; on the accuracy of the Commission's estimate of the burden of the proposed collection of information; on the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information or technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 with reference to File No. S7–29–96. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to the Office of Management and Budget is best assured of having its full effect if the Office of Management and Budget receives it within 30 days of publication.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed technical amendments to rule 2a–7, and proposed amendments to the advertising rules applicable to money market funds. The analysis states that the proposed technical amendments to rule 2a–7 are not intended to effect major substantive changes to the rule, but are designed to codify interpretive positions taken by the staff of the Division of Investment Management; revise terminology in the rule to reflect common usage; modify certain of the March Amendments so that the treatment accorded certain instruments by rule 2a–7 more closely reflects the treatment accorded to those instruments by the financial markets; and make certain other technical corrections. The analysis also states that, in light of the nature of the proposed technical amendments to the rule, it would be inconsistent with the purposes of the Regulatory Flexibility Act to propose to exempt small entities from the coverage of these amendments.

The analysis also discusses the proposed amendments to the advertising rules for money market funds. The analysis explains that the proposed amendments are designed to clarify the formula used by money market funds to calculate yield and to prevent investors from being confused or misled by the presentation of a money market fund's short-term total return in lieu of its yield. The analysis states that the concerns that caused the Commission to undertake this proposed rulemaking are equally applicable to funds of all sizes. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Marjorie S. Riegel, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–6, Washington, DC 20549.

VIII. Text of Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 239, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend chapter II, title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 79*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.482 is amended by revising paragraph (d) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(d) In the case of a money market fund:

(1) Any quotation of the money market fund's yield in an advertisement shall be:

(i) A quotation of current yield based on the method of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–3 (§§ 239.17a and 274.11b of this chapter), or Form N–4 (§§ 239.17b and 274.11c of this chapter) and identifying the length of and the date of the last day in the base period used in computing that quotation; or

(ii) A quotation of current yield described in paragraph (d)(1)(i) of this section and a corresponding quotation of effective yield based on the method of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–3 (§§ 239.17a and 274.11b of this chapter), or Form N–4 (§§ 239.17b and 274.11c of this chapter); provided, that when both a quotation of current yield and effective yield are used in the same advertisement, each quotation shall relate to an identical base period and shall be given equal prominence; and

(2) Any quotation of total return shall cover a period of no less than one year and shall be accompanied by a quotation of the fund's current yield described in paragraph (d)(1)(i) of this section.

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PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The authority citation for part 270 is amended by revising the general authority as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(b), 80a-37, 80a-39 unless otherwise noted;

* * * * *

4. Section 270.2a-7 is revised to read as follows:

§ 270.2a-7 Money market funds.

(a) *Definitions.* (1) *Acquisition* (or *Acquire*) shall mean any purchase or subsequent rollover (but does not include the failure to exercise a Demand Feature).

(2) *Amortized Cost Method* of valuation shall mean the method of calculating an investment company's net asset value whereby portfolio securities are valued at the fund's Acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors.

(3) *Asset Backed Security* shall mean a fixed income security (other than a Government security) issued by a Special Purpose Entity (as defined in this paragraph), substantially all of the assets of which consist of Qualifying Assets (as defined in this paragraph). *Special Purpose Entity* shall mean a trust, corporation, partnership or other entity organized for the sole purpose of

issuing securities which entitle their holders to receive payments that depend primarily on the cash flow from Qualifying Assets, but does not include a registered investment company.

Qualifying Assets shall mean financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(4) *Business Day* shall mean any day, other than Saturday, Sunday, or any customary business holiday.

(5) *Collateralized Fully* in the case of a repurchase agreement shall mean that:

(i) The value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the money market fund reasonably could expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the Resale Price (as defined in paragraph (a)(5(v) provided in the agreement;

(ii) The money market fund or its custodian either has actual physical possession of the collateral or, in the case of a security registered on a book entry system, the book entry is maintained in the name of the money market fund or its custodian;

(iii) The collateral consists entirely of cash items, Government Securities or other securities that at the time the repurchase agreement is entered into are rated in the highest rating category by the Requisite NRSROs; and

(iv) Upon an event of insolvency with respect to the seller, the repurchase agreement would qualify under a provision of applicable insolvency law providing an exclusion from any general stay of creditors' rights against the seller.

(v) *Resale Price* shall mean the Acquisition price paid to the seller of the securities plus the accrued resale premium on such Acquisition price. The accrued resale premium shall be the amount specified in the repurchase agreement or the daily amortization of the difference between the Acquisition price and the resale price specified in the repurchase agreement.

(6) *Conditional Demand Feature* shall mean a Demand Feature that is not an Unconditional Demand Feature. A Conditional Demand Feature is not a Guarantee.

(7) *Conduit Security* shall mean a security issued by a Municipal Issuer (as defined in this paragraph) involving an arrangement or agreement entered into, directly or indirectly, with a person other than a Municipal Issuer, which arrangement or agreement provides for or secures repayment of the security. *Municipal Issuer* shall mean a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. A Conduit Security *does not* include a security that is:

(i) Fully and unconditionally guaranteed by a Municipal Issuer; or

(ii) Payable from the general revenues of the Municipal Issuer or other Municipal Issuers (other than those revenues derived from an agreement or arrangement with a person who is not a Municipal Issuer that provides for or secures repayment of the security issued by the Municipal Issuer); or

(iii) Related to a project owned and operated by a Municipal Issuer; or

(iv) Related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a Municipal Issuer.

(8) *Demand Feature* shall mean:

(i) A feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the time of exercise. A Demand Feature must be exercisable either:

(A) At any time on no more than 30 calendar days' notice; or

(B) At specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice; or

(ii) A feature permitting the holder of an Asset Backed Security unconditionally to receive principal and interest within 397 calendar days of making demand.

(9) *Demand Feature Issued By A Non-Controlled Person* shall mean a Demand Feature issued by a person that, directly or indirectly, does *not* control, and is not controlled by or under common control with the issuer of the security subject to the Demand Feature; and a sponsor of an Asset Backed Security with respect to an Asset Backed Security. *Control* shall mean ''control'' as defined in section 2(a)(9) of the Act (15 U.S.C. 80a-2(a)(9)).

(10) *Eligible Security* shall mean:

(i) A security with a remaining maturity of 397 calendar days or less that has received a short-term rating (or that has been issued by an issuer that has received a short-term rating with respect to a class of debt obligations, or any debt obligation within that class, that is comparable in priority and security with the security) by the Requisite NRSROs in one of the two highest short-term rating categories (within which there may be sub-categories or gradations indicating relative standing); or

(ii) An Unrated Security that is of comparable quality to a security meeting the requirements of paragraph (a)(10)(i) of this section, as determined by the money market fund's board of directors; *Provided, however,* that:

(A) A security that at the time of issuance had a remaining maturity of more than 397 calendar days but that has a remaining maturity of 397 calendar days or less and that is an Unrated Security is not an Eligible Security if the security has received a long-term rating from any NRSRO that is not within the NRSRO's three highest long-term ratings categories (within which there may be sub-categories or gradations indicating relative standing) unless the security has received a long-term rating from the Requisite NRSROs in one of the three highest rating categories;

(B) An Asset Backed Security (other than an Asset Backed Security substantially all of whose Qualifying Assets consist of obligations of one or more Municipal Issuers, as that term is defined in paragraph (a)(7) of this section) shall not be an Eligible Security unless it has received a rating from an NRSRO.

(iii) In addition, in the case of a security that is subject to a Demand Feature or Guarantee:

(A) The Guarantee has received a rating or is issued by an issuer that has received a rating from an NRSRO (unless the Guarantee is issued by a person that, directly or indirectly, controls, is controlled by or is under common control with the issuer of the security subject to the Guarantee); and

(B) The issuer of the Demand Feature or Guarantee, or another institution, has undertaken promptly to notify the holder of the security in the event the Demand Feature or Guarantee is substituted with another Demand Feature or Guarantee (if such substitution is permissible under the terms of the Demand Feature or Guarantee).

(11) *Event of Insolvency* shall mean, with respect to a person:

(i) An admission of insolvency, the application by the person for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general assignment for the benefit of creditors, the filing by the person of a voluntary petition in bankruptcy or application for reorganization or an arrangement with creditors; or

(ii) The institution of similar proceedings by another person which proceedings are not contested by the person; or

(iii) The institution of similar proceedings by a government agency responsible for regulating the activities of the person, whether or not contested by the person.

(12) *First Tier Security* shall mean any Eligible Security that:

(i) Has received a short-term rating (or that has been issued by an issuer that has received a short-term rating with respect to a class of debt obligations, or any debt obligation within that class, that is comparable in priority and security with the security) by the Requisite NRSROs in the highest short-term rating category for debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(ii) Is an Unrated Security that is of comparable quality to a security meeting the requirements of paragraph (a)(12)(i) of this section, as determined by the fund's board of directors; or

(iii) Is a security issued by a registered investment company that is a money market fund; or

(iv) Is a Government Security.

(13) *Floating Rate Security* shall mean a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and which, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(14) *Guarantee* shall mean an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the Guarantee (if required), at a specified time a price equal to the principal amount of the underlying security plus accrued interest when due or upon default, or, in the case of an Unconditional Demand Feature, an obligation that entitles the holder to receive upon exercise the approximate amortized cost of the underlying security or securities, plus accrued interest, if any. A Guarantee includes a letter of credit, financial guaranty (bond) insurance, and an Unconditional Demand Feature (other than an Unconditional Demand Feature provided by the issuer of the security).

(15) *Guarantee Issued by a Non-Controlled Person* shall mean a Guarantee issued by a person that, directly or indirectly, does *not* control, and is not controlled by or under common control with the issuer of the security subject to the Guarantee; and a sponsor of a Special Purpose Entity with respect to an Asset Backed Security. *Control* shall mean ''control'' as defined in section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)).

(16) *Government Security* shall mean any Government security as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(17) *NRSRO* shall mean any nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi) (E), (F) and (H) of § 240.15c3–1 of this chapter that is not an affiliated person, as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of, or any insurer, or provider of credit support for, the security.

(18) *Penny-Rounding Method* of pricing shall mean the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(19) *Refunded Security* shall mean a debt security the principal and interest payments of which are to be paid by Government Securities (''deposited securities'') that have been irrevocably placed in an escrow account pursuant to agreement between the issuer of the debt security and an escrow agent that is not an affiliated person, as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of the debt security, and, in accordance with such escrow agreement, are pledged only to the payment of the debt security and, to the extent that excess proceeds are available after all payments of principal, interest, and applicable premiums on the Refunded Securities, the expenses of the escrow agent and, thereafter, to the issuer or another party; *provided* that:

(i) The deposited securities shall not be redeemable prior to their final maturity;

(ii) The escrow agreement shall prohibit the substitution of the deposited securities unless the substituted securities are Government Securities; and

(iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant shall have certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities; *Provided, however*, an independent public accountant need not have provided the certification described herein if the security, as a Refunded Security, has received a rating from an NRSRO in the highest category for debt obligations (within which there may be sub-categories or gradations including relative standing).

(20) *Requisite NRSROs* shall mean:

(i) Any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or

(ii) If only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund Acquires the security, that NRSRO.

(21) *Second Tier Security* shall mean any Eligible Security that is not a First Tier Security. *Second Tier Conduit Security* shall mean any Conduit Security that is an Eligible Security that is not a First Tier Security.

(22) *Single State Fund* shall mean a Tax Exempt Fund that holds itself out as seeking to maximize the amount of its distributed income that is exempt from the income taxes or other taxes on investments of a particular state and, where applicable, subdivisions thereof.

(23) *Tax Exempt Fund* shall mean any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(24) *Total Assets* shall mean, with respect to a money market fund using the Amortized Cost Method, the total amortized cost of its assets and, with respect to any other money market fund, the total market-based value of its assets.

(25) *Unconditional Demand Feature* shall mean a Demand Feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

(26) *United States Dollar-Denominated* shall mean, with reference to a security, that all principal and interest payments on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal amount to be repaid, and the timing of payments related to such security do not vary or float with the value of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(27) *Unrated Security* shall mean:

(i) A security with a remaining maturity of 397 calendar days or less issued by an issuer that did not, at the time the security was Acquired by the fund, have a current short-term rating assigned by any NRSRO:

(A) To the security; or

(B) To the issuer of the security with respect to a class of debt obligations (or

any debt obligation within that class) that is comparable in priority and security with the security, or a Demand Feature with respect to the security; and

(ii) A security that is a rated security and is the subject of an external credit support agreement (including an arrangement by which the security has become a Refunded Security) that was not in effect when the security (or the issuer) was assigned its rating unless the security has a rating from an NRSRO reflecting the existence of the credit support agreement.

(iii) A security is not an Unrated Security if any debt obligation *(reference security)* that is issued by the same issuer and is comparable in priority and security with that security has a short-term rating by an NRSRO. The status of such security as an Eligible Security or First Tier Security shall be the same as that of the reference security.

(28) *Variable Rate Security* shall mean a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and which, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(b) *Holding Out and Use of Names and Titles.* (1) It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act (15 U.S.C. 80a–33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a–24(b)) to hold itself out to investors as a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3) and (c)(4) of this section.

(2) It shall constitute the use of a materially deceptive or misleading name or title within the meaning of section 35(d) of the Act [15 U.S.C. 80a–34(d)] for a registered investment company to adopt the term ''money market'' as part of its name or title or the name or title of any redeemable securities of which it is the issuer, or to adopt a name which suggests that it is, a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(3) For purposes of this paragraph, a name which suggests that a registered investment company is a money market fund or the equivalent thereof shall include one which uses such terms as ''cash,'' ''liquid,'' ''money,'' ''ready assets'' or similar terms.

(c) *Share Price Calculations.* The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by any registered investment company (''money market fund''), notwithstanding the requirements of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and of §§ 270.2a–4 and 270.22c–1 thereunder, may be computed by use of the Amortized Cost Method or the Penny-Rounding Method; *Provided, however,* That:

(1) *Board Findings.* The board of directors of the money market fund shall determine, in good faith, that it is in the best interests of the fund and its shareholders to maintain a stable net asset value per share or stable price per share, by virtue of either the Amortized Cost Method or the Penny-Rounding Method, and that the money market fund will continue to use such method only so long as the board of directors believes that it fairly reflects the market-based net asset value per share.

(2) *Portfolio Maturity.* The money market fund shall maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share or price per share; *Provided, however,* That the money market fund will not:

(i) Except as provided in paragraph (c)(2)(ii) of this section, acquire any instrument with a remaining maturity of greater than 397 calendar days; or

(ii) In the case of a money market fund not using the Amortized Cost Method, acquire a Government Security with a remaining maturity of greater than 762 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds ninety days.

(3) *Portfolio Quality*—(i) *General.* The money market fund shall limit its portfolio investments to those United States Dollar-Denominated securities that the fund's board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to any rating assigned to such securities by an NRSRO) and which are at the time of Acquisition Eligible Securities.

(ii) *Second Tier Securities.* Immediately after the Acquisition of any Second Tier Security:

(A) *Taxable Funds.* A money market fund that is not a Tax Exempt Fund shall not have invested more than Five Percent of its Total Assets in securities which are Second Tier Securities; and

(B) *Tax Exempt Funds.* A money market fund that is a Tax Exempt Fund shall not have invested more than Five Percent of its Total Assets in Conduit Securities which are Second Tier Conduit Securities.

(iii) *Securities Subject to Guarantees.* A security that is subject to a Guarantee may be determined to be an Eligible Security or a First Tier Security based solely on whether the Guarantee is an Eligible Security or First Tier Security, as the case may be.

(iv) *Securities Subject to Conditional Demand Features.* A security that is subject to a Conditional Demand Feature (''Underlying Security'') may be determined to be an Eligible Security or a First Tier Security only if:

(A) The Conditional Demand Feature is an Eligible Security or First Tier Security, as the case may be; and

(B) At the time of the Acquisition of the Underlying Security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the Conditional Demand Feature not being exercisable will occur; and

(*1*) The conditions limiting exercise either can be monitored readily by the fund, or relate to the taxability, under federal, state or local law, of the interest payments on the security; or

(*2*) The terms of the Conditional Demand Feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the Demand Feature in accordance with its terms; and

(C) The Underlying Security or any Guarantee of such security (or the debt securities of the issuer of the Underlying Security or Guarantee that are comparable in priority and security with the Underlying Security or Guarantee) has received either a short-term rating or a long-term rating, as the case may be, by the Requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories (within which there may be sub-categories or gradations indicating relative standing) or, if unrated, is determined to be of comparable quality by the money market fund's board of directors to a security that has received a rating from the Requisite NRSROs within the NRSRO's two highest short-term or long-term rating categories, as the case may be.

(4) *Portfolio Diversification*—(i) *Issuer Diversification.* The money market fund shall be diversified with respect to issuers of securities Acquired by the fund as provided in paragraphs (c)(4)(i) and (c)(4)(ii) of this section, other than with respect to Government Securities and securities subject to a Guarantee Issued By A Non-Controlled Person.

(A) *Taxable and National Funds.* Immediately after the Acquisition of any security, a money market fund other than a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security; *Provided, however,* that such a fund may invest up to twenty-five percent of its Total Assets in the First Tier Securities of a single issuer for a period of up to three Business Days after the Acquisition thereof, *Provided, Further,* that the fund may not invest in the securities of more than one issuer in accordance with the foregoing proviso in this paragraph at any time.

(B) *Single State Funds.* With respect to seventy-five percent of its Total Assets, immediately after the Acquisition of any security, a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security; *Provided, however,* That a Single State Fund shall not invest more than five percent of its Total Assets in securities issued by the issuer of the security unless the securities are First Tier Securities.

(C) *Second Tier Securities*—(*1*) *Taxable Funds.* Immediately after the Acquisition of any Second Tier Security, a money market fund that is not a Tax Exempt Fund shall not have invested more than the greater of one percent of its Total Assets or one million dollars in securities issued by that issuer which are Second Tier Securities.

(*2*) *Tax Exempt Funds.* Immediately after the Acquisition of any Second Tier Conduit Security, a money market fund that is a Tax Exempt Fund shall not have invested more than the greater of one percent of its Total Assets or one million dollars in securities issued by that issuer which are Second Tier Conduit Securities.

(ii) *Issuer Diversification Calculations.* For purposes of making calculations under paragraph (c)(4)(i) of this section:

(A) *Repurchase Agreements.* The Acquisition of a repurchase agreement may be deemed to be an Acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market fund is Collateralized Fully.

(B) *Refunded Securities.* The Acquisition of a Refunded Security shall be deemed to be an Acquisition of a Government Security.

(C) *Conduit Securities.* A Conduit Security shall be deemed to be issued by the issuer (other than the Municipal Issuer) ultimately responsible for payments of interest and principal on the security.

(D) *Asset Backed Securities*—(*1*) *General.* An Asset Backed Security shall be deemed to be issued by the Special Purpose Entity that issued the Asset Backed Security, *Provided, however,* any person whose obligations constitute ten percent or more of the principal amount of the Qualifying Assets of that Special Purpose Entity (''Ten Percent Obligor'') shall be deemed to be an issuer of the portion of the Asset Backed Security such obligations represent; and

(*2*) *Secondary Asset Backed Securities.* If the Ten Percent Obligor is itself a Special Purpose Entity issuing Asset Backed Securities (''Secondary ABS''), then that obligor shall be deemed to have issued a portion of the assets of the primary Asset Backed Security that such Secondary ABS represents. For purposes of identifying Ten Percent Obligors, continue down the chain of Ten Percent Obligors until a Special Purpose Entity with no Ten Percent Obligor is reached.

(*3*) *Demand Features and Guarantees.* In the case of a Ten Percent Obligor deemed to be an issuer, the fund shall satisfy the diversification requirements of paragraph (c)(4)(iii) of this section with respect to any Demand Feature or Guarantee to which the Ten Percent Obligor's obligations are subject.

(E) *Shares in Master Funds.* A money market fund substantially all of the assets of which consist of shares of another money market fund Acquired in reliance on section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)) shall be deemed to be in compliance with this section if the board of directors of the money market fund holding the assets of another money market fund reasonably believes that the fund in which it has invested is in compliance with this section.

(iii) *Diversification Rules for Demand Features and Guarantees.* The money market fund shall be diversified with respect to Demand Features and Guarantees Acquired by the fund as provided in paragraphs (c)(4)(iii) and (c)(4)(iv) of this section, other than with respect to a Demand Feature issued by the same institution that issued the underlying security.

(A) *General.* Immediately after the Acquisition of any Demand Feature or Guarantee or security subject to a Demand Feature or Guarantee, a money market fund, with respect to seventy-five percent of its Total Assets, shall not have invested more than ten percent of its Total Assets in securities issued by or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee, subject to paragraphs (c)(4)(iii) (B) and (C) of this section.

(B) *Second Tier Demand Features or Guarantees.* Immediately after the Acquisition of any Demand Feature or Guarantee (or a security after giving effect to the Demand Feature or Guarantee) that is a Second Tier Security, a money market fund shall not have invested more than five percent of its Total Assets in securities issued by or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee.

(C) *Demand Features or Guarantees Issued by Non-Controlled Persons.* Immediately after the Acquisition of any security subject to a Demand Feature or Guarantee, a money market fund shall not have invested more than ten percent of its Total Assets in securities issued by, or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee, unless, with respect to any security subject to Demand Features or Guarantees from that institution (other than securities issued by such institution), the Demand Feature or Guarantee is a Demand Feature or Guarantee Issued By A Non-Controlled Person.

(iv) *Demand Feature and Guarantee Diversification Calculations*—(A) *Fractional Demand Features or Guarantees.* In the case of a security subject to a Demand Feature or Guarantee from an institution by which the institution guarantees a specified portion of the value of the security, the institution shall be deemed to guarantee the specified portion thereof, *Provided, however,* if the security is an Asset Backed Security and the Demand Feature or Guarantee is with respect to all or a portion of the first losses with respect to the security, the institution providing the Demand Feature or Guarantee shall be deemed to have provided the Demand Feature or Guarantee with respect to the entire principal amount of the security.

(B) *Layered Demand Features or Guarantees.* In the case of a security subject to Demand Features or Guarantees from multiple institutions that have not limited the extent of their obligations as described in paragraph (c)(4)(iv)(A) of this section, each institution shall be deemed to have

provided the Demand Feature or Guarantee with respect to the entire principal amount of the security.

(v) *Diversification Safe Harbor.* A money market fund that satisfies the applicable diversification requirements of paragraph (c)(4) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act (15 U.S.C. 80a–5(b)(1)) and the rules adopted thereunder.

(5) *Demand Features and Guarantees Not Relied Upon.* If the fund's board of directors has determined that the fund is not relying on a Demand Feature or Guarantee to determine the quality (pursuant to paragraph (c)(3) of this section), or maturity (pursuant to paragraph (d) of this section), or liquidity of a portfolio security, and maintains a record of this determination (pursuant to paragraphs (c)(9)(ii) and (c)(10)(vi) of this section), then the fund may disregard such Demand Feature or Guarantee for all purposes of this section.

(6) *Downgrades, Defaults and Other Events*—(i) *Downgrades*—(A) *General.* Upon the occurrence of either of the events specified in paragraphs (c)(6)(i)(A)(*1*) and (*2*) of this section with respect to a portfolio security, the board of directors of the money market fund shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund and its shareholders:

(*1*) A portfolio security of a money market fund ceases to be a First Tier Security (either because it no longer has the highest rating from the Requisite NRSROs or, in the case of an Unrated Security, the board of directors of the money market fund determines that it is no longer of comparable quality to a First Tier Security); and

(*2*) The money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware that any Unrated Security or Second Tier Security held by the money market fund has, since the security was Acquired by the fund, been given a rating by any NRSRO below the NRSRO's second highest short-term rating category.

(B) *Securities To Be Disposed of.* The reassessments required by paragraph (c)(6)(i)(A) of this section shall not be required if, in accordance with the procedures adopted by the board of directors, the security is disposed of (or matures) within five Business Days of the specified event and, in the case of events specified in paragraph (c)(6)(i)(A)(*2*) of this section, the board is subsequently notified of the adviser's actions.

(C) *Special Rule for Certain Securities Subject to Demand Features.* In the event that after giving effect to a rating downgrade, more than five percent of the fund's Total Assets are invested in securities issued by or subject to Demand Features from a single institution that are Second Tier Securities, the fund shall reduce its investment in securities issued by or subject to Demand Features from that institution to no more than five percent of its Total Assets by exercising the Demand Features at the next succeeding exercise date(s), absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund.

(ii) *Defaults and Other Events.* Upon the occurrence of any of the events specified in paragraphs (c)(6)(ii)(A) through (D) of this section with respect to a portfolio security, the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any Demand Feature or otherwise, absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security):

(A) The default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(B) A portfolio security ceases to be an Eligible Security;

(C) A portfolio security has been determined to no longer present minimal credit risks; or

(D) An Event of Insolvency occurs with respect to the issuer of a portfolio security or the provider of any Demand Feature or Guarantee.

(iii) *Notice to the Commission.* In the event of a default with respect to one or more portfolio securities (other than an immaterial default unrelated to the financial condition of the issuer) or an Event of Insolvency with respect to the issuer of the security or any Demand Feature or Guarantee to which it is subject, where immediately before default the securities (or the securities subject to the Demand Feature or Guarantee) accounted for ½ of 1 percent or more of a money market fund's Total Assets, the money market fund shall promptly notify the Commission of such fact and the actions the money market fund intends to take in response to such situation. Notification under this paragraph shall be made telephonically or by means of a facsimile transmission, followed by letter sent by first class mail, directed to the attention of the Director of the Division of Investment Management.

(iv) *Defaults for Purposes of Paragraphs (c)(6)(ii) and (iii).* For purposes of paragraphs (c)(6) (ii) and (iii) of this section, an instrument subject to a Demand Feature or Guarantee shall not be deemed to be in default (and an Event of Insolvency with respect to the security shall not be deemed to have occurred) if:

(A) In the case of an instrument subject to a Demand Feature, the Demand Feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; or

(B) The provider of the Guarantee is continuing, without protest, to make payments as due on the instrument.

(*7*) *Required Procedures: Amortized Cost Method.* In the case of a money market fund using the Amortized Cost Method:

(i) *General.* In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, shall establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to stabilize the money market fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at a single value.

(ii) *Specific Procedures.* Included within the procedures adopted by the board of directors shall be the following:

(A) *Shadow Pricing.* Written procedures shall provide:

(*1*) That the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute which reflects current market conditions) from the money market fund's amortized cost price per share, shall be calculated at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions;

(*2*) For the periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and

(3) For the maintenance of records of the determination of deviation and the board's review thereof.

(B) *Prompt Consideration of Deviation.* In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, the board of directors shall promptly consider what action, if any, should be initiated by the board of directors.

(C) *Material Dilution or Unfair Results.* Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

(8) *Required Procedures: Penny-Rounding Method.* In the case of a money market fund using the Penny-Rounding Method, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors undertakes, as a particular responsibility within the overall duty of care owed to its shareholders, to assure to the extent reasonably practicable, taking into account current market conditions affecting the money market fund's investment objectives, that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will not deviate from the single price established by the board of directors.

(9) *Specific Procedures: Amortized Cost and Penny-Rounding Methods.* Included within the procedures adopted by the board of directors for money market funds using either the amortized cost or penny-rounding methods shall be the following:

(i) *Securities for Which Maturity Is Determined by Reference to Demand Features.* In the case of a security for which maturity is determined by reference to a Demand Feature, written procedures shall require ongoing review of the security's continued minimal credit risks, which review must be based on, among other things, financial data for the most recent fiscal year of the issuer of the Demand Feature and, in the case of a security subject to a Conditional Demand Feature, the issuer of the security whose financial condition must be monitored under paragraph (c)(3)(iv) of this section, whether such data is publicly available or provided under the terms of the security's governing documentation.

(ii) *Securities Subject to Demand Features or Guarantees.* In the case of a security subject to one or more Demand Features or Guarantees which the fund's board of directors has determined that the fund is not relying on to determine the quality (pursuant to paragraph (c)(3) of this section), maturity (pursuant to paragraph (d) of this section) or liquidity of the security subject to the Demand Feature or Guarantee, written procedures shall require periodic evaluation of such determination.

(iii) *Adjustable Rate Securities Without Demand Features.* In the case of a Variable Rate or Floating Rate Security that does not have a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1), (d)(2) or (d)(4) of this section, written procedures shall require periodic review of whether the interest rate formula, upon readjustment of its interest rate, can reasonably be expected to cause the security to have a market value that approximates its amortized cost value.

(iv) *Asset Backed Securities.* In the case of an Asset Backed Security, written procedures shall require the fund to periodically determine the number of Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section.

(10) *Record Keeping and Reporting*—(i) *Written Procedures.* For a period of not less than six years following the replacement of such procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in paragraphs (c)(6) through (c)(9) and (e) of this section shall be maintained and preserved.

(ii) *Board Considerations and Actions.* For a period of not less than six years (the first two years in an easily accessible place) a written record shall be maintained and preserved of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth in this section, to be included in the minutes of the board of directors' meetings.

(iii) *Credit Risk Analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record of the determination that a portfolio security presents minimal credit risks and the NRSRO ratings (if any) used to determine the status of the security as an Eligible Security, First Tier Security or Second Tier Security shall be maintained and preserved in an easily accessible place.

(iv) *Determinations with Respect to Adjustable Rate Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the determination required by paragraph (c)(9)(iii) of this section (that a Variable Rate or Floating Rate Security that does not have a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1), (d)(2) or (d)(4) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its amortized cost).

(v) *Determinations with Respect to Asset Backed Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the determination required by paragraph (c)(9)(iv) of this section (the number of Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (c)(4)(iv)(D) of this section). The written record shall include the identities of the Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section), the percentage of the Qualifying Assets constituted by the securities of each Ten Percent Obligor and the percentage of the fund's Total Assets that are invested in securities of each Ten Percent Obligor.

(vi) *Evaluations with Respect to Securities Subject to Demand Features or Guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (c)(9)(ii) (regarding securities subject to one or more Demand Features or Guarantees) of this section.

(vii) *Inspection of Records.* The documents preserved pursuant to this paragraph (c)(10) shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a-30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)). If any action was taken under paragraphs (c)(6)(ii) (with respect to defaulted securities and events of

insolvency) or (c)(7)(ii) (with respect to a deviation from the fund's share price of more than ½ of 1 percent) of this section, the money market fund will file an exhibit to the Form N–SAR (17 CFR 274.101) filed for the period in which the action was taken describing with specificity the nature and circumstances of such action. The money market fund will report in an exhibit to such Form any securities it holds on the final day of the reporting period that are not Eligible Securities.

(d) *Maturity of Portfolio Securities.* For purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except as provided in paragraphs (d)(1) through (d)(8) of this section:

(1) *Adjustable Rate Government Securities.* A Government Security which is a Variable Rate Security where the variable rate of interest is readjusted no less frequently than every 762 calendar days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A Government Security which is a Floating Rate Security shall be deemed to have a remaining maturity of one day.

(2) *Short-Term Variable Rate Securities.* A Variable Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(3) *Long-Term Variable Rate Securities.* A Variable Rate Security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a Demand Feature shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) *Short-Term Floating Rate Securities.* A Floating Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day.

(5) *Long-Term Floating Rate Securities.* A Floating Rate Security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a Demand Feature, shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(6) *Repurchase Agreements.* A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(7) *Portfolio Lending Agreements.* A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) *Money Market Fund Securities.* An investment in a money market fund shall be treated as having a maturity equal to the period of time within which the Acquired money market fund is required to make payment upon redemption, unless the Acquired money market fund has agreed in writing to provide redemption proceeds to the investing money market fund within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(e) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section (other than the determinations required by paragraphs (c)(1) (board findings); (c)(6)(i)(C) (rule for certain securities subject to second tier Demand Features); (c)(6)(ii) (defaults and other events); (c)(7)(i) (general required procedures: Amortized Cost Method); (c)(7)(ii)(A) (shadow pricing), (B) (prompt consideration of deviation), and (C) (material dilution or unfair results); and (c)(8) (required procedures: Penny Rounding Method) of this section) provided:

(1) *Written Guidelines.* The Board shall establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraph (c)(3) of this section) and procedures under which the delegate makes such determinations:

(2) *Oversight.* The Board shall take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security or Event of Insolvency with respect to the issuer of the security or any Guarantee to which it is subject that requires notification of the Commission under paragraph (c)(6)(iii) of this section) to assure that the guidelines and procedures are being followed.

5. Section 270.2a41–1 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 270.2a41–1 Valuation of standby commitments by registered investment companies.

(a) A standby commitment means a right to sell a specified underlying security or securities within a specified period of time and at an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise, that may be sold, transferred or assigned only with the underlying security or securities. A standby commitment entitles the holder to receive same day settlement, and will be considered to be from the party to whom the investment company will look for payment of the exercise price. A standby commitment may be assigned a fair value of zero, Provided, That:

* * * * *

6. Section 270.12d3–1 is amended by revising paragraph (d)(7)(v) to read as follows:

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(d) * * *

(7) * * *

(v) Acquisition of Demand Features or Guarantees, as these terms are defined in § 270.2a–7(a)(8) and § 270.2a–7(a)(14) respectively, provided that, immediately after the acquisition of any Demand Feature or Guarantee, the company will not, with respect to 75 percent of the total value of its assets, have invested more than ten percent of the total value of its assets in securities underlying Demand Features or Guarantees from the same institution. For the purposes of this section, a Demand Feature or Guarantee will be considered to be from the party to whom the company will look for payment of the exercise price.

* * * * *

7. Section 270.17a–9 is revised to read as follows:

§ 270.17a–9 Purchase of certain securities from a money market fund by an affiliate, or an affiliate of an affiliate.

The purchase of a security that is no longer an Eligible Security (as defined in paragraph (a)(10) of § 270.2a–7) from an open-end investment company holding itself out as a ''money market'' fund shall be exempt from section 17(a) of the Act (15 U.S.C. 80a–17(a)), provided that:

(a) The purchase price is paid in cash; and

(b) The purchase price is equal to the greater of the amortized cost of the security or its market price (in each case, including accrued interest).

8. Section 270.31a–1 is amended by revising the last sentence of paragraph (b)(1) to read as follows:

§ 270.31a–1 Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

* * * * *

(b) * * *

(1) * * * In the case of a money market fund, also identify the provider of any Demand Feature or Guarantee (as defined in § 270.2a–7(a)(8) or § 270.2a–7(a)(14) respectively) and give a brief description of the nature of the Demand Feature or Guarantee (*e.g.*, unconditional demand feature, conditional demand feature, put, letter of credit, or bond insurance) and, in a subsidiary portfolio investment record, provide the complete legal name and accounting and other information (including sufficient information to calculate coupons, accruals, maturities, puts, and calls) necessary to identify, value, and account for each investment.

* * * * *

9. Section 270.34b–1 is amended by revising paragraph (b) (the Note remains unchanged), to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section:

(i) In the case of sales literature regarding a money market fund:

(A) Any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the money market fund, shall be accompanied by a quotation of current yield specified by paragraph (d)(1) of § 230.482 of this chapter;

(B) Any quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the money market fund shall be accompanied by a quotation of tax equivalent yield as specified in paragraph (d)(1) of § 230.482 of this chapter; and

(C) Any quotation of total return shall cover a period of no less than one year and shall be accompanied by a quotation of the fund's current yield described in paragraph (b)(1)(i) of this section which shall be given equal prominence.

(ii) In the case of sales literature regarding a company other than a money market fund:

(A) Any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the company shall be accompanied by a quotation of current yield specified by paragraph (e)(1) of § 230.482 of this chapter; and

(B) Any quotation of tax equivalent yield of other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the company shall be accompanied by a quotation of tax equivalent yield as specified in paragraph (e)(1) of § 230.482 of this chapter.

(2) The requirements specified in paragraphs (b) (1) and (2) of this section shall not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act (15 U.S.C. 80a-29), containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor shall the requirements of paragraphs (e)(3)(ii) and (f) of § 230.482 of this chapter apply to any such periodic report containing any other performance data.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–-29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

11. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Form N–1A [Amended]

12. Part B, Item 22(a) of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

(a) Adding in paragraphs (i) and (ii) the phrase ''and income other than investment income'' after the phrase ''exclusive of capital changes'' in each paragraph.

(b) Adding at the end of Instruction 2 the following: ''Exclude income other than investment income.''

* * * * *

Note: Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

13. Guide 21 (Disclosure of Risk Factors) to Form N–1A (referenced in 17 CFR 239.15A and 274.11A) is amended by revising the word ''effect'' to read ''affect'' in the sentence of the last paragraph.

* * * * *

Note: Guide 21 to Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

14. Guide 35 (Money Market Fund Investments in Other Money Market Funds) to Form N–1A (referenced in 17 CFR 239.15A and 274.11A] is amended by revising the last sentence to read as follows:

* * * Paragraph (c)(4)(ii)(E) of rule 2a–7 describes the obligations of a fund that invests substantially all of its assets in another money market fund.

Note: Guide 35 to Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

Form N–3 [Amended]

15. Item 25(a) of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

(a) Adding in paragraphs (i) and (ii) the phrase ''and income other than investment income'' after the phrase ''exclusive of capital changes'' in each paragraph.

(b) Adding at the end of Instruction 3 the following: ''Exclude income other than investment income.''

* * * * *

Note: Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

16. Guide 38 to Form N–3 (Money Market Fund Investments in Other Money Market Funds) (referenced in 17 CFR 239.17a and 274.11b) is amended by revising the last sentence to read as follows:

* * * Paragraph (c)(4)(ii)(E) of rule 2a–7 describes the obligations of a fund that invests substantially all of its assets in another money market fund.

Note: Guide 38 to Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–4 [Amended]

17. Part B, Item 21(a) of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by:

(a) Adding in paragraphs (i) and (ii) the phrase ''and income other than investment income'' after the phrase ''exclusive of capital changes'' in each paragraph.

(b) Adding at the end of Instruction 3 the following: ''Exclude income other than investment income.''

* * * * *

Note: Form N–4 does not and the amendments will not appear in the Code of Federal Regulations.

By the Commission.

Dated: December 10, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31783 Filed 12–17–96; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

[DEA–143P]

RIN 1117–AA36

Establishment of Freight Forwarding Facilities for DEA Distributor Registrants

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: In response to industry concerns, the Drug Enforcement Administration (DEA) proposes to amend its regulations to define the term freight forwarding facility. DEA further proposes to amend its regulations to exempt certain freight forwarder facilities from registration requirements. These amendments will establish regulatory guidelines under which distributors registered with DEA may utilize freight forwarding facilities when shipping controlled substances to another DEA registrant.

DATES: February 18, 1996.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

I. Background

For many years, distributors registered with the DEA have utilized the services of common carriers to transport controlled substances to other registrants. These common carriers, who are not DEA registrants and therefore are not subject to the security and record keeping regulations promulgated pursuant to the Controlled Substances Act (CSA), often transfer the controlled substances from one conveyance to another at certain points during the shipment. In-transit losses due to theft of controlled substances have frequently occurred at these transfer points.

In discussions with DEA, distributors have expressed their interest in utilizing ''freight forwarding facilities,'' enabling them to employ proprietary or contracted shipping and better prevent in-transit losses. These controlled substance distributors represent that permitting distributors to utilize freight forwarding facilities will not only minimize in-transit losses, it will also facilitate more timely delivery of controlled substances and help lower health care costs.

To accomplish these goals, DEA proposes to permit distributors to extend their registrations to freight forwarding facilities operated by the distributor. In so doing, DEA is providing distributors an alternative means of delivery and allowing them to exercise direct control and responsibility for the controlled substances. By so extending the registration, the distributor will be required to comply with certain security and record keeping requirements proposed below.

Pursuant to these regulations, DEA proposes to allow distributors to use certain designated freight forwarding facilities as an extension of their registration. However, DEA has determined that due to security concerns, returns of controlled substances cannot be routed through the freight forwarding facilities because the registrant operating the facility will have no control over when drugs will be returned to the facility. Distributors who use freight forwarding facilities will not be required to obtain a separate registration for such facilities, but will be required to comply with record keeping and security requirements detailed below.

Distributors will be required to notify DEA in advance of their intent to utilize a freight forwarding facility. The distributor understands that if DEA approves the distributor's request, DEA will have the authority to conduct administrative inspections of the freight forwarding facility pursuant to 21 U.S.C. 822 and 880.

II. Notification of Use of a Freight Forwarding Facility

Although no separate DEA registration will be required for utilization of freight forwarding facilities for DEA distributor registrants, it will be necessary to notify DEA of their existence. DEA distributor registrants who intend to operate a freight forwarding facility must first notify both the DEA office in the area in which the distributor is located and the office in which the freight forwarding facility will be located. This facility must be for exclusive use of the named DEA distributor registrant and cannot be shared for use by another DEA registrant. Notification must be accomplished by registered letter, return receipt requested. If DEA does not communicate written disapproval within 21 days after confirmed receipt, the facility will be considered approved. Reasons for disapproval of a freight forwarding facility might include a registrant's failure to comply with DEA regulations or a history of losses.

Notification should consist of the distributor's DEA registration number, registered address and the address of the freight forwarding facility. A description of the operation of the freight forwarding facility should be included, listing such information as the hours of operation and the name, home address and date of birth of the designated responsible person. Information should be provided indicating what measures have been taken to limit accessibility to controlled substances at the facility. Notification should also include a description of the physical security in place at the facility. The physical security description should include a summary of the controlled substance temporary storage area including dimensions, specifications and alarm devices and identify the central station provider or delineation of the registrant's control station as specified in 21 CFR 1301.72(b)(4)(v).

A description of the recordkeeping procedures should also be included in the notification by providing an outline of recordkeeping procedures or copies of sample records.

III. Security of Freight Forwarding Facilities

The DEA distributor registrant utilizing a freight forwarding facility is

responsible for providing adequate security to guard against losses of controlled substances. DEA is proposing to amend 21 CFR Part 1301 by adding a new Section, 1301.77, outlining the security requirements. The new section requires either continuous observation of controlled substances stored in a segregated area by a designated responsible person(s) during the temporary storage, or by the installation of appropriate physical security measures. In some situations, a combination of the aforementioned two options may be permitted. The general security requirements currently found in 21 CFR 1301.71 are applicable and should be emphasized, since the freight forwarding facilities are located outside the normal realm of the distributor's registered location. It is necessary to pay special attention to security considerations, such as the extent of unsupervised public access and adequacy of supervision over employees within the facility. Definite procedures are required to be in place to control maintenance personnel and nonemployee service personnel.

Proposed physical security controls for all controlled substances routed through the freight forwarding facility, including Schedule II controlled substances, are those currently in place for Schedule III–V substances as set forth in 21 CFR 1301.72(b), unless the substances will remain under the constant observation of responsible person(s).

Access to controlled substances will be kept to an absolute minimum number of specifically authorized individuals. Only sealed containers, which do not identify controlled substances contents on the outside packaging, will be permitted to be temporarily stored or shipped through the freight forwarding facility. DEA distributor registrants will be permitted to utilize their proprietary fleet, or a specific contract carrier. Temporary storage at the freight forwarding facility will be permitted for a period of less than twenty-four (24) hours.

IV. Recordkeeping

There must be a clearly defined audit trail as part of the complete records maintained for all controlled substances transferred through the freight forwarding facility. DEA is proposing to amend the regulations by adding 21 CFR Section 1304.03(i), to specify the recordkeeping requirements. The records must contain dates, times of transfer, authorized signatures and number of cartons, crates, drums, or other packages in which commercial containers of controlled substances are shipped, to document the flow of controlled substances from the long distance conveyance through the freight forwarding facility to the local conveyance or from long distance conveyance directly to the local conveyance. These records must be traceable to a particular registrant invoice. The type of records to be kept can be designed by the individual registrant and must be kept for two years and stored at the freight forwarding facility. All other controlled substance recordkeeping requirements currently found in 21 CFR part 1304 are applicable. The freight forwarding facility will be exempt from all inventory requirements and ARCOS reporting.

The Deputy Assistant Administrator, Office of Diversion Control, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This proposal provides an alternative system that may allow some distributors a more efficient means of delivering controlled substances. Indeed, the regulated industry has represented that this procedure will benefit the industry by allowing it to lower costs associated with shipping controlled substances. Further, this regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulations. The Deputy Assistant Administrator, Office of Diversion Control, has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget. This regulation provides an exemption from certain requirements of the CSA for registrants operating freight forwarding facilities, thus allowing them a more efficient and cost effective means of doing business.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612 and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, DEA is proposing to amend 21 CFR parts 1301 and 1304 as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877, unless otherwise noted.

2. Section 1301.02 is proposed to be amended by redesignating paragraph (m) as paragraph (n) and adding a new paragraph (m) to read as follows:

§ 1301.02 Definitions.

* * * * *

(m) The term *freight forwarding facility* means a separate facility operated by a DEA distributor registrant through which sealed, packaged controlled substances, in unmarked shipping containers, are stored for less than 24 hours while being routed to the ultimate DEA registrant consignee. A freight forwarding facility is a controlled premises as defined in § 1316.02 (c). The term does not include a facility through which controlled substance returners are processed.

* * * * *

3. Section 1301.23 is proposed to be amended by adding a new paragraph (b)(4) to read as follows:

§ 1301.23 Separate registrations for separate locations.

* * * * *

(b) * * *

(4) A freight forwarding facility operated by the registrant distributor through which the registered distributor transfers controlled substances from long distance conveyances to local conveyances, provided that the registrant has submitted written notice by registered mail, return receipt requested, of intent to operate the facility to the Administration's offices in the area in which the distributor is registered and in the area in which the facility will be located and that notice has been approved. Such notice shall detail the location of the facility, the hours of operation, the individual(s) responsible for the controlled substances, and the security and recordkeeping procedures that will be employed. The notice will be considered approved 21 days after receipt by the Administration provided the registrant has not been otherwise notified in writing by the Administration.

4. Section 1301.77 is proposed to be added under the undesignated center

heading ''Security Requirements'' as follows:

§ 1301.77 Security controls for freight forwarding facilities.

(a) All Schedule II–V controlled substances that will be temporarily stored/docked at the freight forwarding facility must be:

(1) Maintained under constant observation of the designated responsible individual(s) in a segregated area; or

(2) Where controlled substances will not be under the constant observation of the designated responsible individual(s), temporary storage in a caged area which meets the requirements of § 1301.72(b), and is secured by an alarm system operated by the registrant as specified in § 1301.72 (b)(4)(v), is required.

(b) Access to controlled substances must be kept to a minimum number of specifically authorized individuals.

(c) Only sealed, unmarked shipping containers will be permitted for transfer or temporary storage at the freight forwarding facility.

PART 1304—[AMENDED]

1. The authority citation for part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(d), 965, unless otherwise noted.

2. Section 1304.03 is proposed to be amended by adding a new paragraph (i) to read as follows:

§ 1304.03 Person required to keep records and file reports.

* * * * *

(i) A distributor registrant that utilizes a freight forwarding facility shall maintain records reflecting the transfer of controlled substances from the long distance conveyance, through the facility, to the local conveyance or from the long distance conveyance directly to the local conveyance. The records must contain the date, time of transfer, number of cartons, crates, drums or other packages in which commercial containers of controlled substances are shipped and authorized signatures for each transfer. The records of these shipments must be maintained at the facility for a period of two years.

Dated: December 6, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 96–32077 Filed 12–17–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC12

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS proposes to amend the regulations governing quality assurance (QA) of safety and pollution prevention equipment (SPPE). The SPPE QA requirements currently fond in the regulations need refining to lessen the paperwork burden on MMS and industry and to ensure that Outer Continental Shelf operators continue to use the best available and safest equipment.

DATES: MMS will consider all comments we receive by February 18, 1997. We will begin reviewing comments then and may not fully consider comments we receive after February 18, 1997.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Bill Hauser, Engineering and Standards Branch, telephone (703)787–1600.

SUPPLEMENTARY INFORMATION:

Background

SPPE include the following equipment:

- Surface and underwater safety valves and their actuators,
- Subsurface safety valves and associated safety valve locks and landing nipples.

The current SPPE regulations, found at 30 CFR 250.126, require that lessees use SPPE certified by the manufacturer as having been produced under a QA program MMS recognizes. MMS currently recognizes two QA standards:

(1) American Society of Mechanical Engineers/American National Standards Institute Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations (ASME/ANSI SPPE–1).

(2) American Petroleum Institute (API) Specification for Quality Programs (Spec Q1).

MMS incorporated the QA requirements into the regulations in April 1988 when the offshore operating rules governing oil, gas, and sulphur exploration, development, and production on the OCS were consolidated. MMS required lessees to submit a list of all certified and noncertified SPPE in their inventory as of April 1, 1988, and to notify MMS when listed SPPE were removed from service for failure, malfunction, or remanufacture.

On July 6, 1988 (53 FR 25349), MMS proposed to recognize API's QA standard as an acceptable alternate or optional QA standard for the manufacture of SPPE. The API standard required manufacturers to meet API Spec Q1 in combination with API Specification for Subsurface Safety Valve Safety Equipment (Spec 14A) and API Specification for Surface Safety Valves and Underwater Safety Valves (Spec 14D). MMS evaluated the comments regarding the proposed rulemaking and determined that the API QA standard was an acceptable program. The API standard was recognized in a final rule dated March 22, 1990 (55 FR 10614). References to both API's and ASME/ANSI's QA standards were updated to incorporate the latest editions into the regulations on September 13, 1990 (55 FR 37709).

Regulatory Review

During a review of regulations, MMS evaluated the merit of continuing the SPPE QA requirements. The MMS examined the scope and effect of these requirements and determined that they were effective but needed revisions.

In January 1994, MMS decided to pursue a negotiated rulemaking to develop a proposed rule governing SPPE QA regulations. The preliminary steps of this effort included contacting interested parties (valve manufacturers, lessees, standards organizations, and environmental groups) to educate them on negotiated rulemaking and to determine their willingness to participate in the rulemaking effort. In April 1994, the ''convener'' held initial formal interviews with the interested parties. Over the next few months it became evident that, while MMS needed to revise the regulations, a negotiated rulemaking was not necessary.

This negotiated rulemaking exercise did succeed in getting the parties involved in the SPPE QA program to communicate. Misunderstandings between the parties were cleared up, and the consensus emerged that the SPPE QA program should continue for MMS and industry to ensure that the best available and safest technology and equipment are being used on the OCS.

However, the parties also felt that MMS needed to change the current regulations to reduce the paperwork burden on SPPE manufacturers, lessees, and the MMS.

Intent of the Proposed Rule

The intent of this proposed rule is to eliminate some paperwork involved in complying with the SPPE QA regulations and to ensure that lessees use high quality SPPE on the OCS. MMS proposes to eliminate the need for companies to update their lists of noncertified SPPE and to require that all SPPE installed on OCS wells after April 1, 1998 must be QA certified. Lessees can continue to use non-QA certified SPPE that were in service before April 1, 1998. However, the lessee must replace the noncertified SPPE with certified SPPE when the SPPE:

(1) Fail during normal operations,

(2) Fail during testing, or

(3) Are removed from service for any other reason.

The justification for proposing this rulemaking option comes from many areas. In repeated contacts with lessees, valve manufacturers, and standards organizations, the overwhelming consensus is that the QA program has succeeded in improving the overall quality of SPPE used on the OCS. In other words, the perception is that certified SPPE are better than noncertified SPPE. Also, lessees will have had 10 years from the date MMS codified the QA requirements to deplete their inventory of noncertified SPPE. MMS feels that 10 years is ample time for lessees to deplete their inventory of noncertified SPPE and that there are not enough noncertified SPPE left in inventories to cause the overall industry any undue hardship. So, MMS has decided that eliminating the use of SPPE designed and manufactured over 10 years ago will ensure that lessees use the best available and safest technology and equipment.

Other Changes to the Regulations

As part of changing the SPPE QA regulations, MMS proposes to update 30 CFR 250.1, Documents Incorporated by Reference. Specifically, MMS proposes to reference the following documents:

(1) ANSI/ASME SPPE–1–1994, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, and

(2) API Spec Q1, Specification for Quality Programs, Fifth Edition, December 1994. These documents are updates of previous editions that MMS incorporated by reference.

Executive Order (E.O.) 12866

The Department of the Interior (DOI) reviewed this rule under E.O. 12866 and determined that this is not an economically significant rule. The Office of Management and Budget (OMB) has reviewed this rule at OMB's request.

Regulatory Flexibility Act

The DOI has also determined that this proposed rule will not have a significant economic effect on a substantial number of small entities. Most entities that engage in offshore activities as operators are not small because of the technical complexities and financial resources necessary to conduct such activities safely. Small entities are more likely to operate onshore or in State waters—areas not covered by this proposed rule. Small entities are more likely to work as contractors to larger entities on the OCS, or, in the case of SPPE, they may work at repairing SPPE. This proposed rule will not have any effect on small SPPE repair shops or manufacturers since it does not impose any new restrictions on them. This proposed rule should not cause the business practices of SPPE repair and manufacturing entities to change. Under the current rule, a lessee may not re-install an uncertified SSSV on the OCS after it fails or malfunctions. As uncertified SSV or USV may not be re-installed on the OCS after the lessee removes it for remanufacturing. Therefore, this proposed rule should not cause the business practices of SPPE repair and manufacturing entities to change.

Paperwork Reduction Act

This rule eliminates the information collection requirement contained in § 250.126(b)(2) which reduces the information collection inventory by 1,000 hours. The OMB approved the information collection requirements remaining in § 250, Subpart H, under OMB control number 1010–0059. However, as part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden in Subpart H. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior (OMB control number 1010–0059), Washington, DC 20503. Send a copy of your comments to the Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 20170–4817. You may obtain a copy of the collection of information by contacting the Bureau's Information Collection Clearance Officer at (703) 787–1242.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The title of this collection of information is ''30 CFR 250, Subpart H, Oil and Gas Production Safety Systems.

The collection of information consists of applications and approval for design, installation, and operation of subsurface safety devices and surface production-safety systems and related requirements; notifying MMS prior to production and conduct of preproduction tests and inspections; approval of quality assurance programs covering manufacture of SPPE; and related recordkeeping requirements. The requirement to respond is mandatory. MMS uses the information to evaluate equipment and/or procedures lessees propose to use during production operations and to verify compliance with minimum safety requirements.

Respondents are approximately 130 Federal OCS oil, gas, and sulphur lessees. The frequency of submission varies. The public reporting burden for this information is estimated to average 1.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. MMS estimates the total annual burden of this collection of information to be 352 reporting hours and 2,548 recordkeeping hours. Based on $35 per hour, the total burden hour cost to respondents is estimated to be $101,500.

In calculating the burden, MMS assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. MMS considers these to be usual and customary and did not include them in the burden estimates. Commenters are invited to provide information if they disagree with this assumption and they should tell us what are the burden hours and costs imposed by this collection of information.

The MMS will summarize written responses to this notice and address them in the final rule. All comments will become a matter of public record.

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. MMS needs your comments on this item. Your response should split the cost estimate into two components: (a) total capital and startup cost, and (b) annual operation, maintenance, and purchase of services. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

Takings Implication Assessment

The DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Unfunded Mandate Reform Act of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments or the private sector.

E.O. 12988

The DOI has certified to OMB that this proposed regulation meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of E.O. 12988.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: September 30, 1996.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, MMS proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: U.S.C. 1334.

2. Section 250.1 is amended by revising paragraphs (c)(5), (d)(1), (d)(4) and (d)(5) to read as follows:

§ 250.1 Documents incorporated by reference.

* * * * *

(c) * * *

(5) ANSI/ASME SPPE–1–1994, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, Incorporated by Reference at: § 250.126(a)(2)(A).

* * * * *

(d) * * *

(1) API Spec Q1, Specification for Quality Programs, Fifth Edition, December 1994, API Stock No. 811–00001, Incorporated by Reference at: § 250.126(a)(2)(B).

* * * * *

(4) API Spec 6A, Specification for Valves and Wellhead Equipment, Seventeenth Edition, February 1, 1996, API Stock No. G06A17, Incorporated by Reference at: §§ 250.126(a)(3) and 250.152 (b)(1) and (b)(2).

(5) API Spec 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, First Edition, February 1, 1996, API Stock No. G06AV1, Incorporated by Reference at: § 250.126(a)(3).

* * * * *

3. MMS is revising § 250.126 to read as follows:

§ 250.126 Safety and pollution prevention equipment quality assurance requirements.

(a) *General requirements.* (1) A lessee may only install certified safety and pollution prevention equipment (SPPE) in wells located on the OCS. SPPE include the following:

(i) Surface safety valves (SSV) and actuators;

(ii) Underwater safety valves (USV) and actuators; and

(iii) Subsurface safety valves (SSSV) and associated safety valve locks and landing nipples.

(2) Certified SPPE are those the manufacturer certifies as having been manufactured under a quality assurance program MMS recognizes. MMS considers all other SPPE noncertified. MMS currently recognizes two quality assurance programs:

(i) ANSI/ASME SPPE–1, Quality Assurance and Certification of Safety and Pollution-Prevention Equipment Used in Offshore Oil and Gas Operations; and

(ii) API Spec Q1, Specification for Quality Programs.

(3) All SSV's and USV's must meet the technical specifications of API Spec 14D or API Spec 6A and 6AV1. All SSSV's must meet the technical specifications of API Spec 14A.

(b) *Use of noncertified SPPE.* Before April 1, 1998, you may continue to use or install noncertified SPPE if the noncertified SPPE were in your inventory as of April 1, 1988, and were included in a list of nonconcertified SPPE submitted to MMS prior to August 29, 1988. After April 1, 1998, you must replace noncertified SPPE with certified SPPE when the noncertified SPPE:

(1) Fail during normal operations,

(2) Fail during testing, or

(3) Are removed from service for any other reason.

(c) *Recognizing other quality assurance programs.* The MMS will consider approving other quality assurance programs covering the manufacture of SPPE. If you want MMS to evaluate other quality assurance programs, submit relevant information about the program and reasons for MMS approval to the Deputy Associate Director for Operations and Safety Management; Minerals Management Service; Mail Stop 4600; 381 Elden Street; Herndon, Virginia 20170–4817.

[FR Doc. 96–32041 Filed 12–17–96; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID5–2–7075b; FRL–5664–9]

Clean Air Act Promulgation of Reclassification of PM–10 Nonattainment Areas in Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action identifies those nonattainment areas in the State of Idaho which have failed to attain the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to ten micrometers (PM–10) by the applicable attainment date of December 31, 1995. This action also proposes to grant a second one-year extension to the attainment date for the Power-Bannock Counties PM–10 nonattainment in Idaho. In the Final Rules Section of this Federal Register, the EPA is granting this extension as a direct final rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for granting the extension is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposal must be received in writing by January 17, 1997.

ADDRESSES: Written comments on this action should be addressed to Montel Livingston, SIP Manager, Environmental Protection Agency, Office of Air Quality, 1200 Sixth Avenue, Seattle Washington, 98101. Copies of the documents relevant to this action are available for public inspection during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101, 206/553–0782.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: December 5, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–32055 Filed 12–17–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 94–055]

RIN 2115–AF23

Licensing and Manning for Officers of Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent.

SUMMARY: The Coast Guard intends to modify the proposed rule on Licensing and Manning for Officers of Towing Vessels and to publish a supplemental notice of proposed rulemaking (SNPRM) before issuing a final rule. The SNPRM will include a new comment period and it may announce additional public meetings.

ADDRESSES: The Executive Secretary maintains the public docket for this rulemaking. Comments previously received have become part of this docket and are available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, between 9:30 a.m. and 2:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Don Darcy, Project Manager, Operating and Environmental Standards Division (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–0221.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On June 19, 1996, the Coast Guard published in the Federal Register a notice of proposed rulemaking (NPRM) that proposed changes to the licensing and manning requirements for officers of towing vessels in order to provide a safer towing industry (61 FR 31332). The NPRM proposed changes including, but not limited to, the following: A graduated series of master and mate (pilot) licenses (allowing holders of current licenses to be grandfathered); an additional license level for new entries—apprentice mate (steersman); route endorsements for particular geographical areas; a limited and unlimited licensing structure based on a 3000-horsepower breakpoint; a practical demonstration of skills; a check-ride with a designated examiner, or completion of a refresher course for renewals and upgrades of licenses; and a clarification that the master of the vessel is responsible for the overall safety of the vessel, but not for another individual's misconduct or incompetence.

The comment period under the NPRM closed on October 17, 1996. Because of the very active public response to the NPRM, through a public meeting, speaking engagements, and numerous written comments, the Coast Guard intends to modify the proposed rule. The Coast Guard will develop a supplemental notice of proposed rulemaking (SNPRM) to help it re-evaluate the proposed rule and the cost-benefit analysis, and to incorporate certain recommendations. Public comments are being reviewed and may be instrumental in the development of the new proposal. The SNPRM will include a comment period, similar to the NPRM, allowing mariners and companies within the industry to express their views on the new changes.

Issuing an SNPRM, before an interim rule or final rule, will also create the potential for further public meetings. Notice will be given in the SNPRM, and otherwise in the Federal Register, regarding dates and times of any further public meetings for this rulemaking.

Requests for Comments

With publication of the SNPRM, the Coast Guard will encourage interested persons to participate in this rulemaking by submitting written data, views, or arguments on the new proposals. There is no need or occasion to refile comments already submitted.

Dated: November 26, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[JR Doc. 96–32026 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1819, 1834, 1845, 1852 and 1870

Revision to the NASA FAR Supplement to Eliminate Non-Statutory Certification Requirements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and Space Administration is publishing a notice of proposed rulemaking to amend the NASA FAR Supplement (NFS) to eliminate all non-statutory imposed contractor and offeror certification requirements.

DATES: Written comments on the proposed rulemakig must be received on or before February 18, 1997.

ADDRESSES: Comments (3 copies) should be addressed to Donald G. Abrams, Office of Procurement, Contract Management Division, Code HK, NASA Headquarters, Washington DC 20546.

FOR FURTHER INFORMATION CONTACT: Donald G. Abrams, telephone (202) 358–0512; facsimile (202) 358–3083; or electronic mail donald.abrams@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4301(b)(1)(B) of the Federal Acquisition Reform Act of 1996 (FARA), Pub. L. 104–106, requires agencies that have procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute to issue for public comment a proposal to amend their regulations to remove the certification requirements. Such certification requirements may be omitted from the agency proposal if (i) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (ii) the head of the executive agency approves in writing the retention of such certification requirement.

The proposed rule constitutes NASA's proposal for the elimination of all non-statutory imposed contractor and offeror certification requirements from the NFS pursuant to section 430(b)(1)(B) of FARA. NASA has not identified any regulatory certification requirement contained in the NFS which it has determined should be proposed for retention. Consequently, the Agency is not pursuing approval from the Administrator of NASA to retain any certification requirement not specifically imposed by statute. The Agency invites public comment on its proposal to eliminate all regulatory certification requirements from the NFS and on its determination that there are no certification requirements which should be proposed for retention.

Agency Proposal to Eliminate Non-Statutory Certification Requirements

The following is the Agency's proposal pertaining to each contractor and offeror certification requirement contained in the NFS.

1. 1816.303 Cost Sharing Contracts

This requirement, which dealt with the certification requested from a university to the fact that it has ''no commercial, production, educational, or service activities on which to use the results of the research and no means of recovering any cost sharing on such projects'', has been deleted from the rewrite of the NFS.

2. 1819.7211 Application Process for Mentor Firms to Participate in the Program

This section, which required that ''a proposed mentor must submit the following information (1) certification that the mentor firm is currently performing under at least one active approved subcontracting plan * * *'' will be rewritten to require simply a statement to the same effect.

3. 1832.7002 Responsibility

This section has been removed due to the rewrite of the NFS (effective October 29, 1996, 61 FR 55765–55774).

4. 1832.7004(b) Contractual Implementation (Milestone Billing)

The section has been removed due to the rewrite of the NFS (effective October 29, 1996, 61 FR 55765–55774).

5. 1834–005–1 Competition (Major Systems Acquisition)

The passing reference under ''(4) Phase D, Development, involves final detailed design, fabrication, certification, and delivery of an operational system that meets program requirements,'' will be deleted from the rewrite to the NFS.

6. 1845.302–73 Determination and Findings (Decision to Provide Government Property)

Whereas the previous section was worded, ''contractor has certified inability to acquire the facilities'', this will be rewritten to have the contractor ''demonstrate inability to acquire* * *''.

7. 1852.223–70 Safety and Health

Previously, the clause required the contractor to submit a certification program for personnel involved in hazardous operations as required by the contract schedule or the contracting officer.'' This will be rewritten to require ''qualification standards for personnel* * *''. This clause was published in the Federal Register October 29, 1996 (61 FR 55753–55764).

8. 1852–247–73 Shipment by Government Bills of Lading

This optional transportation clause for use in f.o.b. Origin contracts instructs the contractor to certify on his/her invoices that the material has been shipped. It will be rewritten to require simply a statement that the material has been shipped.

9. 1870.102–703 VI Proposal Submission Information (Investigation Acquisition System)

Section 2.6, entitled Certification, previously required that ''the proposal must be signed by an institutional official authorized to certify institutional support * * *''. It will be rewritten to be entitled ''Signatory'' and require ''signed by institutional official authorized to ensure* * *''.

Public Comments

NASA invites interested persons to participated by submitting data, views, or arguments with respect to the NFS amendments set forth in this proposed rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this rule. All comments received will be available for public inspection during normal work hours. All written comments received by the date indicated in the **DATES** section of this notice will be carefully assessed and full considered prior to the effective date of these amendments as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. NASA reserves the right to determine the confidential status of the information and to treat it according to

its determination in accordance with 10 CFR 1004.11.

Impact

NASA certified that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

NASA has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, NASA has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 1819, 1834, 1845, 1852 and 1870

Government Procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR 1819, 1834, 1845, 1852 and 1870 are proposed to be amended as follows:

1. The authority citation for 48 CFR 1819, 1834, 1845, 1852 and 1870 continues to read as follows:

Authority: U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1819.7211 [Amended]

2. Section 1819.7211 is revised to read as follows:

1819.7211 Application process for mentor firms to participate in the program.

(a) Prime contractors interested in becoming a mentor firm must submit a request to the NASA OSDBU to be approved under the program. The application will be evaluated on the extent to which the company plans to provide developmental assistance. The information required in paragraph (b) of this section must be submitted to be considered for approval as a mentor firm.

(b) A proposed mentor must submit the following information to the NASA OSDBU:

(1) A statement that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and that they are eligible, as of the date of application, for the award of Federal contracts;

(2) The cognizant NASA contract number(s), type of contract, period of performance (including options), title of technical program effort, name of NASA Program Manager (including contact information) and name of NASA field center where support is provided;

(3) The number of proposed Mentor-Protégé arrangements;

(4) Data on all current NASA contracts and subcontracts to include the contract/subcontract number(s), period of performance, awarding NASA installation or contractor and contract/subcontract value(s) including options;

(5) Data on total number and dollar amount of subcontracts awarded under NASA prime contracts within the past 2 years and the number of dollar value of such subcontracts awarded to entities defined as protégés.

(6) Information on the proposed types of developmental assistance. For each proposed Mentor-Protégé relationship include information on the company's ability to provide developmental assistance to the identified protégé firm and how that assistance will potentially increase subcontracting opportunities for the protégé firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(7) A Letter of Intent signed by both parties. At a minimum, the Letter of Intent must include the stated commitment that the parties intend to enter into a mentor-protégé agreement under the NASA program, that they intend to cooperate in the development of a suitable developmental assistance program to meet their respective needs, and that they agree to comply with the obligations in section 1819.7215 and all other provisions governing the program.

PART 1834—MAJOR SYSTEM ACQUISITION

1834.005–1 [Amended]

3. In section 1834.005–1, the existing paragraph (b)(4) is removed and paragraph (b)(5) is redesignated as paragraph (b)(4).

PART 1845—GOVERNMENT PROPERTY

1845.302–73 [Amended]

4. Section 1845.302–73 is revised to read as follows:

1845.302–73 Determination and findings.

(a) Procedure. Determination and findings (D&F) required under FAR 45.302–1(a)(4) shall be prepared by the contracting officer and approved by the procurement officer. Prior to approval of the D&F by the procurement officer, concurrence must be obtained from the Director of Administration or equivalent, to ensure that the requiring activity and the installation supply and equipment management officer agree to the use of the Government facilities by the contractor. D&Fs shall address individual types of facilities to be provided to the contractor. Reference to specific variations in quantities of items to be provided should be included in the D&F if additional requirements are anticipated. A separated D&F is required before adding new types of items or significant changes in quantity. A separate D&F is also required before adding any new work to the contract that requires additional Government facilities.

(b) Format. A sample format follows:

(Format) National Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Decision To Provide Government Facilities

On the basis of the following findings and determinations, Government-owned facilities may be provided to [insert the name of the contractor] pursuant to the authority of FAR 45.302–1(a) (4).

Findings

1. The [insert the name of the contracting activity] and the contractor (have entered)/(proposed to enter) into Contract No. [insert the contract number]. (Include the following information: Type of contract, contract value, and a brief description of the scope of work performed under the contract.)

2. (Justify that Government facilities are needed for performance under the contract. The justification shall demonstrate either (i) that the contract cannot be fulfilled by any other means, or (ii) that it is in the public interest to provide the facilities. It is imperative that the justification be fully substantiated by evidence.)

3. (If the contract effort cannot be fulfilled by any other means, indicate why the contractor cannot provide the facilities. For example, due to financial constraints, the contractor has demonstrated inability to acquire the facilities; or, even though the contractor is willing and financially able to acquire these facilities for its own account, the contractor has stated that time will not permit making arrangements to obtain timely delivery to meet NASA requirements. If timely delivery is the problem, state when the contractor will replace the Government facilities with contractor-owned facilities. Address leadtime, validate the contractor's claims, and state that private financing was sought and either not available or not advantageous to the Government. If private financing was not advantageous to the Government, provide justification. Indicate other alternatives considered and reasons for rejection.)

4. (Give a general description of the types of facilities to be provided and indicate the variation in quantities of items based on functional requirements. Explain how these facilities pertain to the scope of work to be completed. State that the contract cannot be accomplished without the specified facility items being provided. Include an estimate of the value of the facilities and a statement that no facilities items under $10,000 unit cost will be provided unless the contractor is a nonprofit, on-site, or the facilities are only available from the Government.)

5. (Indicate whether the property will be accountable under this contract or a separate facilities contract.)

Determination

For the reasons set forth above, it is hereby determined that the Government-owned facilities identified herein will be provided to the contractor.

_____

Procurement Officer

_____

Date

(End of format)

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Part 1852 is amended as set forth below:

1852.223–70 [Amended]

6. Section 1852.223-70 is revised to read as follows: 1852.223–70 Safety and Health.

As prescribed in 1823.7001(a), insert the following clause:

Safety and Health

(February 1996)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and health in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions set forth in the contract Schedule.

(b) The Contractor shall take or cause to be taken any other safety and health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other provision of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupations injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of $25,000 or more arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule. The Contractor shall investigate all work-related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Office may require, of the investigative findings and proposed or completed corrective actions.

(d) (1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (d) (1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that (1) amount to $1,000,000 or more (unless the Contracting Officer makes a written determination that this is not required), (2) require construction, repair, or alteration in excess of $25,000, or (3) regardless of dollar amount, involve the use of hazardous materials or operations.

(f) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.

(g) As a part of the Contractor's safety plan (and health plan, when applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in paragraphs (a) and (b) of this clause, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence either or both of the following, as required by the contract Schedule or by the Contracting Officer:

(1) Written hazardous operating procedures for all hazardous operations.

(2) A certification program for personnel involved in hazardous operations.

(End of clause)

§ 1852.247–73 [Amended]

7. Section 1852.247—73 is revised to read as follows:

§ 1852.247–73 Shipment by Government bills of lading.

As prescribed in 1847.305–70(c), insert the following clause:

Shipment by Government Bills of Lading

(March 1989)

(a) The Contractor shall ship items deliverable under this contract, if the transportation cost per shipment exceeds $100, by Government bills of lading (GBLs). At least 15 days before shipment, the Contractor shall request in writing GBLs from: _____ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: _____ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(1) Item identification/description.
(2) Origin and destination.
(3) Individual and total weights.
(4) Dimensions and total cubic footage.
(5) Total number of pieces.
(6) Total dollar value.
(7) Other pertinent data.

(b) The Contractor shall prepay transportation charges of $100 or less per shipment. The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be completed, signed by an authorized company representative, and attached to the invoice. The shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number:

_____

Destination:

'' _____

(End of clause)

PART 1870—NASA SUPPLEMENTARY REGULATIONS

§ 1870.102, Appendix I Chapter 7— [Amended]

8. In Appendix I to 1870.102, Chapter 7, section 703, paragraph VI is revised to read as follows:

APPENDIX I TO 1870.102—GUIDELINES FOR ACQUISITION OF INVESTIGATIONS

* * * * *

CHAPTER 7—PROCUREMENT AND OTHER CONSIDERATIONS

703. Other Administrative and Functional Requirements

* * * * *

VI. Proposal Submission Information

1. Preproposal Activities—In this section, the AO will indicate requirements and activities such as the following:

a. Submittal of ''Notice of Intent'' to propose (if desired), date for submission, and any additional required data to be submitted. Indicate whether there are information packages which will only be sent to those who submit ''Notice of Intent.''

b. Attendance at the preproposal conference (if held). Information should be provided as to time, place, whether attendance will be restricted in number from

each institution, and whether prior notice of intention to attend is required. If desired, a request may be included that questions be submitted in writing several days before the conference in order to prepare replies.

c. The name and address of the scientific or technical contact for questions or inquiries.

d. Any other preproposal data considered necessary.

2. Format of Proposals—This section should provide the investigator with the information necessary to enable an effective evaluation of the proposal. The information is as follows:

a. Proposal—The AO should indicate how the proposal should be submitted to facilitate evaluation. The proposal should be submitted in at least two sections; (1) Investigation and Technical Section; and (2) Management and Cost Section.

b. Signatory—The proposal must be signed by an institutional official authorized to ensure institutional support, sponsorship of the investigation, management, and financial aspects of the proposal.

c. Quantity—The number of copies of the proposal should be specified. One copy should be clear black and white, and on white paper of quality suitable for reproduction.

d. Submittal Address—Proposals from domestic sources should be mailed to arrive not later than the time indicated for receipt of proposals to:

National Aeronautics and Space Administration, Office of (Program)

Code _____ AO No. _____
Washington, DC 20546

e. Format—To aid in proposal evaluation, and to facilitate comparative analysis, a uniform proposal format will be required for each AO. The number of pages, page size, and restriction on photo reduction, etc., may be included. The format contained in Appendix C can be used as a guide. Proposers may be requested to respond to all of the items or the AO may indicate that only selected items need be addressed. Using the Appendix format as a guide, specific guidelines may be prepared for the AO or an appropriate form developed.

3. Additional Information—This section may be used to request or furnish data necessary to obtain clear proposals that should not require further discussions with the proposer by the evaluators. Other pertinent data could also be included, such as significant milestones.

4. Foreign Proposals—The procedures for submission of proposals from outside the U.S. are contained in Appendix B, ''General Instructions and Provisions.'' This section will describe any additional requirements, for example, if information copies of proposals are required to be furnished by the proposer to other organizations at the same time the proposal is submitted.

5. Cost Proposals (U.S. Investigators Only)—This section defines any special requirements regarding cost proposals of domestic investigators. Reference then should be made to the cost proposal certifications indicated in Appendix B, ''General Instructions and Provisions''.

* * * * *

[FR Doc. 96–31985 Filed 12–17–96; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346–6346–01; I.D. 120596A]

RIN 0648–XX76

Fisheries of the Northeastern United States; Summer Flounder, Scup and Black Sea Bass Fisheries; Specifications for the 1997 Summer Flounder Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 1997 summer flounder fishery that include a coastwide harvest limit, an increase in minimum commercial fish size, and an increase in codend minimum mesh size. The implementing regulations for the fishery require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder resource.

DATES: Public comments must be received on or before January 13, 1997.

ADDRESSES: Copies of supporting documents used by the Summer Flounder Monitoring Committee are available from: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. Comments on the proposed specifications should be sent to: Dr. Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments—1997 Summer Flounder Specifications.''

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 508–281–9226.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP) describe the process for establishing annual management measures to achieve the targeted fishing mortality (F_{tgt}) rates stipulated in the FMP. The schedule established by the FMP is a fishing mortality rate of 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and beyond. In addition, the FMP specifies that the coastwide harvest limit for 1996 and 1997 may not exceed 18.51 million lb (8.4 million kg), except if the specified fishing mortality rate (F) of 0.23 is met.

The FMP established a Summer Flounder Monitoring Committee (Monitoring Committee) consisting of representatives from the Atlantic States Marine Fisheries Commission (ASMFC), the New England, Mid-Atlantic and South Atlantic Fishery Management Councils, and NMFS. The Monitoring Committee makes recommendations to the Mid-Atlantic Fishery Management Council's (Council) Demersal Species Committee and the ASMFC after reviewing the following information: (1) Commercial and recreational catch data; (2) estimates of fishing mortality; (3) stock status; (4) current estimates of recruitment; (5) virtual population analysis (VPA) results; (6) levels of regulatory noncompliance by fishermen or individual states; (7) impact of fish size and net mesh regulations; (8) sea sampling and Northeast Fisheries Science Center winter trawl survey data; (9) impact of gear other than otter trawls on the mortality of summer flounder; and (10) other relevant information.

The Monitoring Committee recommends annual measures designed to achieve F_{tgt} to the Council's Demersal Species Committee and the ASMFC. These measures may include: (1) A coastwide harvest limit, (2) changes in commercial minimum fish size and mesh size, and (3) restrictions to gears other than otter trawls. The Council and the ASMFC then consider the Monitoring Committee's recommendations and any public comments and make their recommendations.

1997 Recommendations

The summer flounder stock assessment conducted within the 22nd Northeast Regional Stock Assessment Workshop (SAW–22), held in the spring of 1996, identified key issues that were addressed by the Monitoring Committee and discussed by the Council. As in all the years since FMP implementation,

the target fishing mortality rate for 1995 was exceeded. In addition, the spawning stock is not rebuilding as much as was projected in previous assessments. Also, a retrospective pattern has been identified, in which stock assessments have consistently underestimated fishing mortality and overestimated stock size in the terminal year of the assessment. Retrospective analysis applies the most recent assessment information to fine-tune and determine the accuracy and pattern of predictions made in the past (before the current information was known). SAW–22 cautioned that the retrospective pattern is probably due to underreporting of landings and high levels of discard. SAW–22 provided projections for the 1997 coastwide harvest limit levels, some of which took into account the retrospective pattern. SAW–22 advised that the projections that account for the underestimation of fishing mortality and overestimation of stock size (i.e., that incorporate the retrospective pattern) are more likely to result in management measures that achieve the target fishing mortality rates, though SAW–22 also acknowledged that there is uncertainty in these projections.

Although SAW–22 indicated some improvement in the summer flounder stock, the age structure of the stock remains truncated, which means that the population is comprised mainly of young fish. Only 12 percent of the total spawning stock biomass (SSB) is estimated to be age-2 and older. Older, larger fish contribute more to the fishery by means of increased egg production and higher yield. If the stock were fished at F_{max} (an exploitation removal amount that maximizes yield-per-recruit) and allowed to rebuild, approximately 88 percent of the spawning stock would be age-2 and older.

Based on SAW–22 projections, the Monitoring Committee recommended a coastwide harvest limit of 14 million lb (6.3 million kg), with 8.4 million lb (3.8 million kg) allocated to the commercial fishery and 5.6 million lb (2.5 million kg) to the recreational fishery. Further, the Monitoring Committee recommended an increase in minimum fish size from 13 (33.0 cm) to 14 inches (35.6 cm) total length (TL) and an increase in minimum codend mesh size to 6 inches (15.2 cm) diamond or square from the current 5½-inch (14.0-cm) diamond or 6-inch (15.2-cm) square.

After considering the Monitoring Committee's harvest limit and minimum fish and minimum mesh size recommendations, the Council proposed less restrictive measures that would maintain the 1996 coastwide harvest limit for 1997. The Council made the following specific recommendations for 1997: (1) A coastwide harvest limit of 18.51 million lb (8.4 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.04 million kg); (3) a coastwide recreational harvest limit of 7.4 million lb (3.36 million kg); (4) no change in the present minimum mesh requirement of 5½ inches (14.0 cm) diamond or 6 inches (15.2 cm) square; and (5) no change in the present minimum commercial fish size of 13 inches (33.0 cm).

The ASMFC approved management measures that agreed with those proposed by the Council, with the exception of the recommendation by the Council not to increase the minimum commercial fish size. The ASMFC voted to increase the present minimum commercial fish size to 14 inches (35.6 cm). The more restrictive minimum fish size would be implemented by the states on or about March 1, 1997, and would apply to federally permitted vessels due to a condition of the vessel permit that requires the operator to abide by the stricter of the state or Federal measures.

In making its 1997 recommendations, the Council stated that it believes that the circumstances leading to the retrospective pattern in the stock assessment will not occur in 1996, and therefore, it did not utilize the SAW–22 projection that incorporates the retrospective pattern. The SAW–22 projection that does not incorporate the retrospective pattern indicated that there is a 64-percent probability that an F_{tgt} of 0.30 will be attained in 1997 if the Council recommendation is implemented (it indicated a 50-percent probability that the F would be 0.27). The SAW–22 projection that incorporates the retrospective pattern estimates only a 13-percent likelihood that the Council's recommended coastwide harvest limit will achieve the FMP target. However, SAW–22 noted considerable uncertainty in that estimate.

The Council cited the following factors that could alleviate the retrospective pattern for 1996 and that may strengthen the likelihood of attaining F_{tgt} in 1997: (1) Recruitment in 1995 was strong, and there are indications of strong recruitment in 1996, as well; (2) the Council's intention to propose an amendment to the FMP, which would require a 5.5-inch (14.0-cm) minimum mesh size throughout the net (the Council assumes that approval of the measure would result in reductions in F in the latter part of 1997); (3) the ASMFC increase in minimum commercial fish size in March 1997 would reduce mortality of small fish; and (4) NMFS and state efforts to improve quota monitoring are expected to reduce underreporting of landings in 1997.

This proposed rule would implement the Council's coastwide harvest limit recommendation, and would increase the likelihood of achieving the Ftgt by modifying the minimum mesh requirement and the minimum commercial fish size. For the sake of consistency with the ASMFC measure, the rule would increase the minimum commercial fish size to 14 inches (35.6 cm). In addition, the rule would increase the minimum codend mesh size to 6 inches (15.2 cm) diamond or square. Both measures should reduce bycatch and conserve age-zero and age-1 fish, thus improving recruitment and reducing F.

In addition, although some of the measures cited by the Council may not be implemented soon enough to have a significant effect in 1997, several, particularly improvements in quota monitoring, would contribute toward achievement of the FMP objectives. Taken as a whole, and in light of the uncertainty associated with the SAW–22 projections that incorporate the retrospective pattern, NMFS believes this suite of measures has a reasonable likelihood of achieving the required 1997 target fishing mortality rate specified in the FMP.

Accordingly, NMFS is seeking public comments on the following proposed specifications: (1) A coastwide harvest limit of 18.51 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.04 million kg); (3) a coastwide recreational harvest limit of 7.4 million lb (3.36 million kg); (4) an increase from the present minimum commercial fish size of 13 inches (33.0 cm) to 14 inches (35.6 cm); and (5) an increase in the present minimum mesh restriction of 5½ inches diamond (14.0 cm) or 6 inches square (15.2 cm) to 6 inches (15.2 cm) diamond or square.

If these proposed specifications are adopted, the commercial quota allocated to each state, according to percentage shares specified in § 648.100(d)(1), would be the amounts depicted in Table 1 below. These state allocations do not reflect the adjustments that will be required under § 648.100(d)(2) for states in which 1996 landings exceeded the state's 1996 quota allocation. The 1996 landings data available at the time of publication of the final specifications will be used to make an initial 1997 quota adjustment for all states with overages as of that date. If additional 1996 landings data are collected following that date, an additional

notification of allocation adjustment will be published in the Federal Register at a later date. Table 2 presents preliminary 1996 landings data and quota overages. These data are subject to change based on new information becoming available or received during the comment period and/or new analyses of existing data.

TABLE 1.—1997 STATE COMMERCIAL QUOTAS (PROPOSED)

State	Share (%)	1997 quota (lb)	1997 quota (kg)
ME	0.04756	5,284	2,397
NH	0.00046	51	23
MA	6.82046	757,841	343,751
RI	15.68298	1,742,583	790,422
CT	2.25708	250,791	113,757
NY	7.64699	849,680	385,408
NJ	16.72499	1,858,363	842,939
DE	0.01779	1,977	897
MD	2.03910	226,570	102,770
VA	21.31676	2,368,569	1,074,365
NC	27.44584	3,049,589	1,383,270
Totals	.....	11,111,298	5,039,999

TABLE 2.—1996 ADJUSTED QUOTAS FOR THE SUMMER FLOUNDER FISHERY AND ACTUAL LANDINGS AND OVERAGES

[As of November 29, 1996]

State	1996 adjusted quota		1996 landings		1996 overage	
	lb	(kg)	lb	(kg)	lb	(kg)
ME	5,284	(2,397)	8,226	(3,731)	2,942	(1,334)
NH	51	(23)	.....	.....	.....	.....
MA	752,092	(341,143)	777,728	(352,771)	25,636	(11,628)
RI	1,620,342	(734,975)	1,620,056	(734,845)	.....	
CT	250,791	(113,751)	266,022	(120,666)	15,231	(6,909)
NY	844,976	(383,275)	915,414	(415,225)	69,595	(31,568)
NJ	1,858,363	(842,939)	2,323,225	(1,053,797)	464,862	(210,858)
DE	1,519	(689)	3,159	(1,433)	1,640	(744)
MD	226,570	(102,770)	216,316	(98,119)	.....	.....
VA	2,200,681	(998,212)	2,117,809	(960,622)	.....	.....
NC	2,451,068	(1,111,786)	3,688,217	(1,672,947)	1,237,149	(561,161)
Totals	10,211,737	(4,631,966)	11,936,172	(5,414,157)	1,818,184	(824,184)

Classification

This action is authorized by 50 CFR part 648 and complies with the National Environmental Policy Act.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as follows:

The rule proposes annual specifications for the summer flounder fishery as follows: (1) A coastwide harvest limit of 18.51 million lb (8.4 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.04 million kg); (3) a coastwide recreational harvest limit of 7.4 million lb (3.36 million kg); (4) an increase from the present minimum commercial fish size of 13 inches (33 cm) to 14 inches (35.6 cm); and (5) an increase in the present minimum mesh restriction of 5½ inches diamond (14.0 cm) or 6 inches square (15.2 cm) to 6 inches (15.2 cm) diamond or square.

The proposed measures would not have a significant economic impact on a substantial number of small entities. The recommended 1997 quota is no different from the 1996 coastwide harvest limit of 18.51 million lb. These measures may impact the fishing industry negatively for the short term, but will prove beneficial in the future. Increasing the minimum codend mesh size would affect approximately 17 percent of the vessels that have a Federal permit to harvest summer flounder; since 6-inch (15.2 cm) mesh codends are already required in other fisheries, many industry members already own them. The minimum fish size requirement may impact industry members, especially those who fish for summer flounder in the southern portion of its range. Small summer flounder tend to have a more southerly distribution and an increase in the minimum fish size would prevent landings of these smaller fish, but higher market value for larger fish may mitigate anticipated losses in landings due to the proposed increase in minimum fish size.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 12, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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 § 648.103, paragraph (a) is revised to read as follows:

§ 648.103 Minimum fish sizes.

(a) The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under § 648.4 (a)(3), except on board party and charter boats carrying

passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

* * * * *

3. In § 648.104, paragraph (a)(1) is revised to read as follows:

§ 648.104 Gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 6.0-inch (15.2 cm) diamond or square mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension.

* * * * *

[FR Doc. 96–32062 Filed 12–17–96; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 61, No. 244
Wednesday, December 18, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–095–1]

Monsanto Co.; Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for a corn line designated as MON 802 that has been genetically engineered for insect resistance and tolerance to the herbicide glyphosate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn line presents a plant pest risk.

DATES: Written comments must be received on or before February 18, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–095–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–095–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. James Lackey, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On November 12, 1996, APHIS received a petition (APHIS Petition No. 96–317–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for an insect-resistant and herbicide-tolerant corn line designated as MON 802. The Monsanto petition states that the subject corn line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, corn line MON 802 has been genetically engineered to express a CryIA(b) insect control protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kurstaki* (Bt). The petitioner states that expression of the Bt delta-endotoxin protein protects the subject corn line from leaf and stalk feeding damage caused by the European corn borer throughout the growing season. Corn line MON 802 also expresses the CP4 EPSPS protein isolated from *Agrobacterium* sp. strain CP4 and the GOX protein cloned from *Achromobacter* sp. strain LBAA, which, when introduced into a plant cell, confer tolerance to glyphosate, the active ingredient in the herbicide Roundup®. The *cryIA(b),* CP4 EPSPS, and *gox* genes were introduced into the subject corn line by the particle acceleration method and their expression is controlled in part by the intron from the corn *hsp70* gene and by gene sequences derived from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens.* The selectable marker gene *nptII* is present in the subject corn line under the control of its own bacterial promoter.

Monsanto's corn line MON 802 is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogenic sources. The subject corn line has been evaluated in field trials conducted since 1993 under APHIS notifications. In the process of reviewing the notifications for field trials of this corn line, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that

all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation. Accordingly, Monsanto has submitted to the EPA an application to register the plant pesticide active ingredient Bt CryIA(b) delta-endotoxin and the genetic material necessary for its production in corn. In cases in which the genetically modified plant allows for a new or different use pattern for an herbicide, the EPA must approve the new or different use. Monsanto has submitted to the EPA an application to register Roundup® herbicide for use on corn. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA. The EPA has granted exemptions from the requirement of a tolerance for residues of the CryIA(b) and CP4 EPSPS proteins and the genetic material necessary for their production in all plants, and Monsanto has submitted to the EPA a request for an exemption from the requirement of a tolerance for the GOX enzyme.

The FDA published a statement of policy on foods derived from new plant varieties in the Federal Register on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Monsanto has completed consultation with the FDA on the subject corn line.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the Federal Register announcing the regulatory status of Monsanto's corn line MON 802 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 12th day of December 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–32079 Filed 12–17–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This collection has been submitted under the emergency PRA procedures.

Agency: Bureau of Export Administration.

Title: Commodity Jurisdiction Transfer of Key Escrow Encryption Items.

OMB Number: None.

Agency Form Number: None.

Type of Request: New collection—Emergency Review.

Burden: 8,800 Hours.

Number of Respondents: 2,200.

Avg. Hrs. Per Response: 4 hours.

Needs and Uses: On October 6, 1995, the administration announced liberalizations on export controls for encryption items. The administration's initiative will make it easier to use stronger encryption products, both at home and abroad, to protect their privacy, intellectual property and other valuable information. It will support the growth of electronic commerce, increase the security of the global information, and sustain the economic competitiveness of U.S. encryption product manufacturers during the transition to a key management infrastructure.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Victoria Wassmer (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: December 10, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–32020 Filed 12–17–96; 8:45 am]

BILLING CODE 3510–DT–P

Foreign-Trade Zones Board

[Docket No. 83–96]

Foreign-Trade Zone 210—St. Clair County, MI; Request for Manufacturing Authority, Petri, Inc. (Automotive Steering Wheels/Related Components)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Huron-St. Clair County Industrial Development Corporation, grantee of FTZ 210, pursuant to § 400.28(a)(2) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Petri, Inc. (Petri) (a subsidiary of Petri AG, Germany) to manufacture automotive steering wheels and related components under FTZ procedures within FTZ 210. It was formally filed on December 10, 1996.

The Petri facilities (134,000 sq. ft. on 18 acres) are located within Site 2 of FTZ 210 at 2223 Dove Street, Port Huron Industrial Park, City of Port Huron, Michigan. The Petri facilities (270 employees) are used to manufacture automotive steering wheels, airbag modules and covers, and clocksprings (for airbag deployment). Components sourced from abroad (from 13 to 82% of finished product material value) include: wheel frames, airbag modules, clocksprings, foam inserts, contact rings, wiring harnesses, electrical switches, vliesses, and terminal covers (duty rate range: 2.9–7.5%). The application indicates that 50 percent of the facilities' shipments are exported.

FTZ procedures would exempt Petri from Customs duty payments on the foreign components used in export production. On its domestic sales, Petri would be able to choose the duty rates during Customs entry procedures that apply to finished steering wheels and airbag components (2.9, 4.2%) for the foreign inputs noted above. The motor vehicle duty rate (2.5%) could apply to the finished steering wheels and airbag components that are shipped to U.S.

motor vehicle assembly plants with subzone status for manufacture into finished motor vehicles under FTZ procedures. The request indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

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.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 18, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 5, 1997.)

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230–0002.

Dated: December 10, 1996.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 96–32117 Filed 12–17–96; 8:45 am]

BILLING CODE 3510–05–M

[Docket 82–96]

Foreign-Trade Zone 80—San Antonio, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of San Antonio, Texas, grantee of FTZ 80, requesting authority to expand its zone in San Antonio, Texas, area, within the San Antonio 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 December 2, 1996.

FTZ 80 was approved on September 16, 1982 (Board Order 200, 47 FR 42011; 9/23/82), and expanded on May 17, 1991 (Board Order 552, 56 FR 24171, 5/29/91). The zone currently consists of eight sites in the San Antonio, Texas, area:

Site 1 (1 acre, 58,000 sq. ft.) Southwest Freight Warehouse, 5040 Space Center Drive, San Antonio;

Site 2 (4 acres, 80,000 sq. ft.)—within San Antonio International Airport complex, John Saunders and Wetmore Roads, San Antonio;

Site 3 (500 acres)—Freeport Business Centre, Quintana Road at I–35, Bexar County;

Site 4 (195 acres)—Cornerstone Business Park, IH–10 East and Loop 410, Bexar County;

Site 5 (281 acres)—Tri-County Business Park, FM 3009 and IH–35, Shertz, Texas (Guadalupe & Comal Counties);

Site 6 (683 acres)—Foster Ridge Industrial Park, Foster and Kiefer Roads, Bexar County;

Site 7 (2 Parcels; 31 acres)—Binz-Engleman Center, I–35 North at Binz-Engleman Road, San Antonio; and City Park East, N.E. Loop 410 at IH–10 East and Eddie Road, San Antonio; and,

Site 8 (9 acres, 208,000 sq. ft.)—1143 Coliseum Road, San Antonio, owned by Security Capital Industrial Trust (expires 10/1/97).

The applicant is now requested authority to expand Sites 2 and 8, and to include two new sites (proposed Sites 9 and 10) as follows:

Site 2—expand to include the airport's East Air Cargo area located on Wetmore Road, San Antonio, increasing total area to 50 acres;

Site 8—expand to include the entire Coliseum Distribution Center, San Antonio, and remove time limit, increasing total area to 46 acres;

Proposed Site 9 (85 acres)—Henry B. Gonzalez and Alamadome Convention Centers, Market Street and Durango Boulevard, San Antonio;

Proposed Site 10 (2,407 acres)—former Kelly Air Force Base including adjacent proposed Van de Walle industrial park (555 acres), Commerce Street and Acme Road, San Antonio.

No specific manufacturing requests are being made at this time. Such 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.

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 February 18, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 5, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Officer, 1222 N. Main, Ste. 450, San Antonio, Texas 78212

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: December 10, 1996.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 96–32118 Filed 12–17–96; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 84–96]

Foreign-Trade Zone 167—Green Bay, WI, Application for Subzone Status, Polaris Industries, Inc., Plant (Internal-Combustion Engines), Osceola, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Brown County, Wisconsin, grantee of FTZ 167, requesting special-purpose subzone status for the small internal-combustion engine manufacturing plant of Polaris Industries, Inc. (Polaris), located in Osceola, Wisconsin. 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 December 11, 1996.

The Polaris plant (45,000 sq. ft.) is located at 108 Industrial Drive in Osceola (Polk County), Wisconsin, some 50 miles east of Minneapolis-St. Paul, Minnesota. The facility (30 employees) is used to produce spark-ignition internal combustion engines (up to 1,050 cc in size) to equip recreational vehicles (snowmobiles, all-terrain vehicles, personal watercraft) that are manufactured in Polaris' other U.S. plants. Components purchased from abroad include: crankshafts, cylinder heads, Bendix assemblies, connecting rods, pistons, flywheels, ignition coils, stators, housings, starters, recoil assemblies (1996 duty rate range: free–3.6%). The application indicates that 30–39 percent of all parts (by value) are purchased from U.S. suppliers.

Zone procedures would exempt Polaris from Customs duty payments on the foreign components used in export production. On its domestic sales, Polaris would be able to choose the lower duty rate that applies to the finished engines (duty free) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

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.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 18, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 3, 1997).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Export Assistance Center, 108 Federal Building, 110 South Fourth Street, Minneapolis, MN 55401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230–0002

Dated: December 11, 1996.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 96–32116 Filed 12–17–96; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–802]

3.5″ Microdisks and Coated Media Thereof From Japan; Extension of Time Limit of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits for Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results in the administrative review of the antidumping duty order on 3.5″ microdisks and coated media thereof from Japan, covering the period April 1, 1995, through March 31, 1996, because it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930 (the Act), as amended, 19 U.S.C. 1675(a)(3)(A). The deadline for issuing the preliminary results for this review is now no later than April 30, 1997.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Russell Morris, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION

Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Background

On May 24, 1996, the Department initiated an administrative review of the antidumping duty order on 3.5″ microdisks and coated media thereof from Japan covering the period April 1, 1995, through March 31, 1996 (61 FR 26158). In our notice of initiation, we stated that we intended to issue the final results of this review not later than April 30, 1997.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to issue preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results of this review within 245 days. Because of the complex issue of valued added in the United States, we are using the Special Rule for Merchandise With Value Added After Importation (*see* section 772(e) of the Act). Therefore, we have requested new sales data from the respondent which will require additional time to analyze properly. Accordingly, the deadline for issuing the preliminary results of this review is now no later than April 30, 1997. The time limit for issuing the final results will be no later than 120 days after publication of the preliminary results. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: December 11, 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–32119 Filed 12–17–96; 8:45 am]

BILLING CODE 3510–DS–P

(A–588–841)

Notice of Postponement of Preliminary Antidumping Duty Determination: Vector Supercomputers From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Sunkyu Kim, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–1777 or (202) 482–2613, respectively.

Postponement of Preliminary Determination

On August 19, 1996, the Department of Commerce (the Department) initiated an antidumping duty investigation of vector supercomputers from Japan (61 FR 43527, August 23, 1996). The notice of initiation stated that if this investigation proceeds normally, the Department would issue its preliminary determination by January 6, 1997.

In accordance with section 733(c)(1)(A) of the Tariff Act of 1930 (the Act), on December 5, 1996, the petitioner made a timely request for a 50-day extension of the deadline for the preliminary determination. Under section 733(c)(1)(A) of the Act and section 353.15(c) of the Department's regulations if, not later than 25 days before the scheduled date for the preliminary determination, the Department receives a request for postponement of the preliminary determination from the petitioner, the Department will, absent compelling reasons for denial, grant the request. Given that there are no compelling reasons to deny this request, we are postponing our preliminary determination in this investigation until no later than February 25, 1997, pursuant to section 733(c)(1) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act, and 19 CFR 353.15(d).

Dated: December 12, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 96–32114 Filed 12–17–96; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Deauthorization of Water Resources Projects

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of project deauthorizations.

SUMMARY: The Corps of Engineers is publishing the lists of water resources projects deauthorized under the provisions of § 1001 (a) and (b), Pub. L. 99–662, 33 U.S.C 579a; projects not deauthorized due to obligations of funds; and project reauthorizations. Previous Federal Register notices were published on October 5, 1990 (Vol. 55, No. 194, 40906–40912), December 15, 1992 (Vol. 57, No. 241, 59335–59337), and September 9, 1994 (Vol. 59, No. 174, 46624–46625). While § 228 of the Water Resources Development Act of 1996, Pub. L. 104–303, which became law on October 12, 1996, changes some provisions of § 1001, Pub. L. 99–662, the deauthorizations in this notice were effective before it became law.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Micik, Headquarters, U.S. Army Corps of Engineers, Attention: CECW–BA, Washington, D.C. 20314–1000. Tel. (202) 761–0705.

SUPPLEMENTARY INFORMATION: The Water Resources Development Act of 1986, Pub. L. 99–662 contains two provisions for the deauthorization of water resource projects and separable elements of projects.

Section 1001(a), 33 U.S.C. 579a(a), requires the deauthorization of projects authorized in 1986 and thereafter when five years have elapsed from the date of authorization without obligations of funds for planning, design or construction. Section 1001(b)(2), 33 U.S.C. 579a(b)(2), requires the Secretary of the Army to submit to the Congress a biennial list of unconstructed water resources projects and separable elements of projects which have had no obligations of funds for planning, design or construction during the prior ten full fiscal years. If funds are not obligated within thirty months from the date the list was submitted, the project/separable element is deauthorized. Notwithstanding these provisions, projects may be reauthorized by law.

For purposes of the Water Resources Development Act of 1986, ''separable element'' is defined in § 103(f), Pub. L. 99–662, 33 U.S.C. 2213(f).

In accordance with § 1001(a), an additional project authorized in 1986 was deauthorized on November 18, 1991. See the Federal Register notices of December 15, 1992, and September 9, 1994, for the lists of other projects deauthorized on November 18, 1991, in accordance with § 1001(a). Also in accordance with § 1001(a), 3 projects authorized and 8 projects reauthorized in 1990 were deauthorized on November 29, 1995, and 1 project reauthorized in 1991 was deauthorized on August 18, 1996.

In accordance with § 1001(b)(2), the Assistant Secretary of the Army (Civil Works) submitted a list of 35 projects and separable elements to Congress on January 8, 1993. From this list, 29 projects/separable elements were deauthorized on July 9, 1995, 4 were removed due to obligations of funds, and 2 were reauthorized by § 363 of the Water Resources Development Act of 1996.

Six additional projects were reauthorized by the Water Resources Development Act of 1996, §§ 328 and 363.

Authority: This notice is required by the Water Resources Development Act of 1986, Pub. L. 99–662, § 1001(c), 33 U.S.C. 579a(c), and the Water Resources Development Act of 1988, Pub. L. 100–676, § 52(d), 102 Stat. 4045.

Dated: December 5, 1996.

Approved:

H. Martin Lancaster,

Assistant Secretary of the Army (Civil Works).

PROJECT AUTHORIZED IN 1986 AND DEAUTHORIZED ON NOVEMBER 18, 1991 BY SECTION 1001(A) OF PUBLIC LAW 99–662

District	Project name	Primary state	Purpose
LMK	BUSHLEY BAYOU	LA	FC

(Supplements the Lists Published in the Federal Register on December 15, 1992 and September 9, 1994).

PROJECTS DEAUTHORIZED ON NOVEMBER 29, 1995 BY SECTION 1001(A) OF PUBLIC LAW 99–662

District	Project name	Primary state	Purpose
SWL	MUD CREEK WETLANDS	AR	FC
SPK	PAJARO RIVER, SANTA CRUZ*	CA	FC
SPN	SANTA CRUZ HARBOR, EAST JETTY*	CA	N
NCE	SAULT SAINTE MARIE, SECOND LOCK*	MI	N
SWA	BELEN	NM	FC
NAN	LAKE GEORGE	NY	FC
NCB	CONNEAUT SMALL BOAT HARBOR*	OH	N
NCB	FAIRPORT HARBOR DREDGING*	OH	N
NCB	FAIRPORT SMALL BOAT HARBOR*	OH	N
LMM	MEMPHIS HARBOR*	TN	N
SWF	EAST FORK OF TRINITY RIVER*	TX	FC

*Projects reauthorized in 1990. See Federal Register notice of September 9, 1994. Total: 11.

PROJECT DEAUTHORIZED ON AUGUST 18, 1996 BY SECTION 1001(A) OF PUBLIC LAW 99–662

District	Project name	Primary state	Purpose
SAM	COOSA RIVER CHANNEL, GADSDEN, AL, TO ROME, GA	AL	N

(Project was reauthorized in 1991. See FEDERAL REGISTER notice of December 15, 1992.)

PROJECTS/SEPARABLE ELEMENTS DEAUTHORIZED ON JULY 9, 1995 by Section 1001(B)(2) OF P.L. 99–662

District	Project name	Primary state	Purpose
SPL	SAN DIEGO RIVER, MISSION VALLEY	CA	FC
SAJ	C&SF, CUTLER DRAINAGE AREA	FL	FC
SAJ	C&SF, HENDRY COUNTY	FL	FC
SAJ	C&SF, MARTIN COUNTY RECREATION	FL	FC
SAJ	C&SF, NICODEMUS SLOUGH	FL	FC
SAJ	C&SF, REEDY CREEK SWAMP	FL	FC
NPW	DWORSHAK DAM, ADDITIONAL UNIT NO. 4	ID	MP
MRK	KANSAS CITY, 1962 MOD (BRIDGE AND APPROACH UNIT)	KS	FC
MRK	KANSAS CITY, 1962 MOD (LOWER ARGENTINE UNIT)	KS	FC
ORN	CELINA LAKE	KY	MP
LMN	MERMENTAU RIVER CHANNEL IMPROVEMENTS	LA	N
LMN	PETIT ANSE, TIGRE, CARLIN BAYOUS	LA	N
NED	SALEM HARBOR	MA	N
NED	WHITMANVILLE LAKE	MA	FC
NCE	BEAVER BAY HARBOR	MN	N
NCE	LUTSEN HARBOR	MN	N
SAM	BUTTAHATCHEE RIVER	MS	FC
SAM	LITTLE BROWNS CREEK	MS	FC
NPS	FLATHEAD RIVER AT KALISPELL	MT	FC
SAW	HOWARDS MILL LAKE	NC	FC
SWT	CANDY LAKE	OK	FC
SWT	LAKE TEXOMA, PERIMETER ACCESS ROAD	OK	MP
MRO	SPRINGFIELD WATER INTAKE	SD	MP
SWG	BAYTOWN	TX	FC
SWF	BIG SANDY LAKE	TX	FC
NPS	RAYMOND WILLAPA RIVER	WA	FC
NPS	SKAGIT RIVER	WA	FC
NPP	VANCOUVER LAKE AREA	WA	FC
NCS	STATE ROAD AND EBNER COULEES (EBNER COULEE)	WI	FC

Total: 29.

PROJECTS/SEPARABLE ELEMENTS REMOVED FROM DEAUTHORIZATION LIST IN ACCORDANCE WITH SECTION 1001(B)(2) OF PUBLIC LAW 99–662 DUE TO OBLIGATIONS OF FUNDS

District	Project name	Primary state	Purpose
SAJ	C&SF, LAKE OKEECHOBEE	FL	FC
POD	KIKIAOLA SMALL BOAT HARBOR, KAUAI	HI	N
NCE	CEDAR RIVER HARBOR	MI	N
SWG	BUFFALO BAYOU, MAIN STREAM	TX	FC
Total:	4.		

PROJECTS REMOVED FROM DEAUTHORIZATION LIST DUE TO REAUTHORIZATION BY LAW

Distrct	Project name	Primary state	Purpose
NCE	ALPENA HARBOR	MI	N
NCE	KNIFE RIVER HARBOR	MN	N

Total: 2
(These projects are also listed under PROJECTS REAUTHORIZED BY LAW).

PROJECTS REAUTHORIZED BY LAW

[Original Authorization in Parentheses]

District	Project name	Primary state	Purpose
By Section 328, Public Law 104–303, October 12, 1996:			
NCE	CROSS VILLAGE HARBOR (1966)	MI	N
(This project has been removed from the list submitted to Congress on October 31, 1994, in accordance with Section 1001(b)(2) of Public Law 99–662).			
By Section 363, Public Law 104-303, October 12, 1996:			
LMK	GRAND PRAIRIE REGION AND BAYOU METO BASIN (1950)	AR	FC
SWL	WHITE RIVER NAVIGATION TO BATESVILLE, AR (1986)	AR	N
NCC	DES PLAINES RIVER WETLANDS DEMONSTRATION (1988)	IL	FC
NCE	ALPENA HARBOR (1965)	MI	N
NCE	ONTONAGON HARBOR, ONTONAGON COUNTY, MI (1962)	MI	N
NCE	KNIFE RIVER HARBOR (1974)	MN	N
NAN	CLIFFWOOD BEACH, RARITAN BAY AND SANDY HOOK BAY (1962)	NJ	FC

Total: 8

Key to Abbreviations

LMV *Lower Mississippi Valley Division*
LMM Memphis District
LMN New Orleans District
LMS St. Louis District
LMK Vicksburg District
MRD *Missouri River Division*
MRK Kansas City District
MRO Omaha District
NED *New England Division*
NAD *North Atlantic Division*
NAB Baltimore District
NAN New York District
NAO Norfolk District
NAP Philadelphia District
NCD *North Central Division*
NCB Buffalo District
NCC Chicago District
NCE Detroit District
NCR Rock Island District
NCS St. Paul District
NPD *North Pacific Division*
NPA Alaska District
NPP Portland District
NPS Seattle District
NPW Walla Walla District
C&SF Central and Southern Florida
ORD *Ohio River Division*
ORH Huntington District
ORL Louisville District
ORN Nashville District
ORP Pittsburgh District
POD *Pacific Ocean Division*
SAD *South Atlantic Division*
SAC Charleston District
SAJ Jacksonville District
SAM Mobile District
SAS Savannah District
SAW Wilmington District
SPD *South Pacific Division*
SPL Los Angeles District
SPK Sacramento District
SPN San Francisco District
SWD *Southwestern Division*
SWA Albuquerque District
SWF Fort Worth District
SWG Galveston District
SWL Little Rock District
SWT Tulsa District

Purpose

N Navigation
BE Beach Erosion Control
FC Flood Control
MP Multiple Purpose Power

[FR Doc. 96–31998 Filed 12–17–96; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF ENERGY

Conduct of Employees; Notice of Waiver Pursuant to Section 207(j)(5), Title 18, United States Code

Section 207(j)(5), title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of sections 207(a)(1), 207(a)(2), and 207(c), to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make appearances before or communications to the Department in connection with a particular matter which requires such qualifications, where it has been determined that the national interest would be served by the participation of the former employee.

It has been established to my satisfaction that Everet H. Beckner, the former Principal Deputy Assistant Secretary, Defense Programs, has a unique combination of outstanding qualifications in the field of nuclear physics as applied to weapons research and development, and associated environmental issues. I am further satisfied that, as the Vice President, Technology Operations and Environment, Safety & Health in Lockheed Martin Corporation's Energy & Environment Sector, it will serve the national interest to permit him to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to the technological development, operation and management, and direction of the national laboratories and plants being managed by Lockheed Martin for the Department of Energy. I am also satisfied that these activities are in a scientific or technical field which requires the qualifications which Dr. Beckner possesses.

I have, therefore, waived the post-employment prohibitions of sections 207(a)(1), 207(a)(2), and 207(c), title 18, United States Code, in consultation with the Director of the Office of Government Ethics, to permit contact by Dr. Beckner with employees of the Department of Energy and other Government agencies with respect to Lockheed Martin Corporation's management and operation of plants and laboratories under contract with the Department of Energy.

Dated: November 21, 1996.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 96–32076 Filed 12–17–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–184–000]

Crossroads Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 12, 1996.

Take notice that on December 9, 1996, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on Appendix A to the following.

Crossroads seeks authority to offer a parking and lending service pursuant to proposed Rate Schedule GPS/GLS. Crossroads seeks to implement Rate Schedule GPS/GLS, which offers its customers, on an interruptible short-term basis, a parking and lending service. Crossroads' filing contains the relevant tariff provisions and forms of service agreement to implement Rate Schedule GPS/GLS. Crossroads is proposing initial rates for service under this rate schedule, all as more fully described in the Statement of Nature, Reasons, and Basis included with the filing. In addition, Crossroads proposes to add provisions to Rate Schedules FT–1 and IT–1 that permit Crossroads to waive imbalance penalties on a non-discriminatory basis. In addition, Crossroads is revising certain provisions of its tariff to comply with Order No. 582. Finally, Crossroads proposes to make minor typographical corrections to its tariff.

Crossroads states further that copies of the filing were served on its current firm and interruptible customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Commission's rules and regulations found in 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 in this proceeding, 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 Crossroads' filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32045 Filed 12–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–264–001]

MidAmerican Energy Company; Notice of Petition To Amend

December 12, 1996.

Take notice that on November 22, 1996, MidAmerican Energy Company (MidAmerican), P.O. Box 657, Des Moines, Iowa 50303, filed in Docket No. CP95–264–001 a petition pursuant to Section 7(f) of the Natural Gas Act to amend its certificate issued in Docket No. CP95–264–000 authorizing a service area determination, all as more fully set forth in the petition on file with the Commission and open to public inspection.

MidAmerican states that it is a local distribution company with a Hinshaw exemption based on Iowa. MidAmerican states that it received a Section 7(f) service area determination in Docket No. CP95–264–000 authorizing it to serve customers across the Iowa borders in Illinois and South Dakota without losing its exemption from Commission regulation. MidAmerican requests herein that its certificate issued in Docket No. CP95–264–000 be amended to include a waiver from the filing and reporting requirements for natural gas companies pursuant to Part 260 of the Commission's regulations. It is asserted that MidAmerican's predecessors received such a waiver and that the reporting requirements would be overly burdensome for a company such as MidAmerican and would duplicate the information submitted to the state bodies which regulate MidAmerican's operations.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 2, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32042 Filed 12–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–53–001]

Steuben Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff Sales Rate Schedule

December 12, 1996.

Take notice that on December 10, 1996, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

First Revised Sheet No. 1
First Revised Sheet No. 57
Original Sheet No. 58
Sheet Nos. 59–123

Steuben states that the above listed sheets are being filed pursuant to the Commission order issued on November 26, 1996, in the above captioned docket. The sheets correct the pagination and volume designation on previously filed tariff sheets. Steuben states that the sheets are proposed to become effective December 1, 1996.

Steuben states that copies of the filing were served upon the company's jurisdictional customers.

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 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32043 Filed 12–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–183–000]

Texas Gas Transmission Corporation; Notice of Filing of Pro Forma Tariff Sheets

December 12, 1996.

Take notice that on December 9, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1 the pro forma tariff sheets listed on Appendix A to the filing.

Texas Gas states that the instant filing is in compliance with the provisions of Order No. 587 issued July 17, 1996, in Docket No. RM96–1–000 and sets forth the proposed changes to Texas Gas's

tariff required to implement the Standards of the Gas Industry Standards Board (GISB). Texas Gas states that, in compliance with Order No. 587, it will file the final tariff sheets implementing the GISB standards to become effective on June 1, 1997.

Texas Gas states that copies of the pro forma tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 30, 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32044 Filed 12–17–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–682; FRL–5576–9]

American Cyanamid Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice is a summary of a pesticide petition proposing the establishment of a regulation for residues of imazapyr (AC 243997) [2-[4,5-dihydro-4-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-pyridinecarboxylic acid], applied as the acid or ammonium salt, in or on field corn. This summary was prepared by the petitioner.

DATES: Comments, identified by the docket number [PF–682], must be received on or before, January 17, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC20460. In person, bring comments to RM 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–682]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 23, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6027, e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4641) from American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide imazapyr in or on the raw agricultural commodities field corn grain, fodder, and forage each at 0.05 ppm. The proposed analytical method is Capillary Electrophoresis Method 2657. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, American Cyanamid Company has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by American Cyanamid Company and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

I. Petition Summary for Imazapyr on Field Corn

On November 9, 1995, American Cyanamid Company petitioned the EPA for a permanent tolerance for the residues of imazapyr on or in field corn grain, forage, and fodder. Imazapyr is currently registered for weed control in non-crop sites. This is the first registration application for a food use in the United States. Section 408(b)(2)(A) of the amended Federal Food, Drug, and Cosmetic Act allows the EPA to establish a tolerance only if the Administrator determines that there is a ''reasonable certainty that no harm will result from the aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' All of the studies required for the proposed use pattern have been completed and submitted to EPA for review. The available information indicates there is a reasonable certainty that no harm will result from various types of exposure. The following is a summary of the information submitted to the EPA to support the establishment, under section 408(b)(2)(D) of the amended FFDCA, of a tolerance for imazapyr on field corn.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residues of imazapyr in corn is adequately understood. In corn forage, fodder and grain samples, the only significant component is parent compound. A modified processing study, utilizing corn treated at exaggerated rates, indicates that the low levels of residue in grain did not concentrate in corn oil and concentrated only slightly (≤ 1.2x) in corn meal.

2. *Analytical method*. A practical analytical method (Capillary Electrophoresis Method 2657) for detecting and measuring levels of imazapyr in corn has been submitted to

EPA. This method is appropriate for enforcement purposes.

3. *Magnitude of residues.* In field corn residue studies conducted at a slightly exaggerated use rate, no residues were detected at levels above 0.05 ppm (the limit of quantitation for the analytical method). These field studies clearly support the proposed tolerance of 0.05 ppm.

B. Toxicological Profile

A complete battery of mammalian toxicology studies supports the tolerance for imazapyr on field corn. The database is complete, valid and reliable, and all studies have been accepted by EPA and found to meet EPA requirements.

1. *Acute toxicity.* Imazapyr technical is relatively non-toxic via the oral route of exposure, and only slightly toxic via the dermal and inhalation routes of exposure.

Acute oral toxicity in rats ..	LD_{50} > 5,000 mg/kg
Acute dermal toxicity in rabbits.	LD_{50} > 2,000 mg/kg
Acute inhalation toxicity in rats.	LC_{50} > 1.3 mg/l
Primary eye irritation in rabbits.	Irreversible irritation
Primary dermal irritation in rabbits.	Slightly irritating
Dermal sensitization in guinea pigs.	Non-sensitizer

2. *Genotoxicity.* Imazapyr has shown no genotoxic activity in *in vitro* tests, indicating that this compound is not a mutagen.

Ames	Non-mutagenic
Chromosomal aberrations	Non-genotoxic
Mammalian gene mutation (CHO/HGPRT).	Non-mutagenic
Unscheduled DNA synthesis.	Non-genotoxic

3. *Reproductive and developmental toxicity.* Results indicate that imazapyr is not a reproductive toxicant, a developmental toxicant, or a teratogen.

Teratology in rats	NOEL (maternal) = 300 mg/kg/day NOEL (developmental) = 1,000 mg/kg/day*
Teratology in rabbits	NOEL (maternal) = 400 mg/kg/day* NOEL (developmental) = 400 mg/kg/day*
2-Generation reproduction in rats.	NOEL (parental reproductive) = 10,000 ppm* (~ 800 mg/kg/day in males) (~ 980 mg/kg/day in females)

* Highest dose tested.

4. *Subchronic toxicity.* No treatment-related adverse effects were noted in subchronic toxicity studies at the highest doses tested.

13-Week oral feeding in rats.	NOEL ≧ 20,000 ppm* (~ 1,740 mg/kg/day)
21-Day dermal in rabbits ..	NOEL = 400 mg/kg/day*

* Highest dose tested.

5. *Chronic toxicity.* The EPA Carcinogenicity Peer Review Committee, on April 26, 1995, assigned imazapyr to Group E for carcinogenic potential since there is ''no evidence of carcinogenicity in at least two adequate animal tests in different species. ''No treatment related effects were observed, and no increase in tumors was observed at any dose level.

1–Year chronic toxicity in dogs.	NOEL = 10,000 ppm* (~ 250 mg/kg/day)
18-Month chronic toxicity & oncogenicity in mice.	NOEL = 10,000 ppm* (~ 1500 mg/kg/day)
24-Month chronic toxicity & oncogenicity in rats.	NOEL = 10,000 ppm* (~ 500 mg/kg/day in males) (~ 640 mg/kg/day in females)

* Highest dose tested

6. *Animal metabolism.* The qualitative nature of the residues of imazapyr in animals is adequately understood. Based on metabolism studies with goats, hens and rats, there is no reasonable expectation that measurable imazapyr-related residues will occur in meat, milk, poultry or eggs from the proposed use.

7. *Metabolite toxicology.* No significant metabolites were detected in plant or animal metabolism studies. Therefore, toxicology studies with metabolites are not required.

8. *Endocrine effects.* Collective organ weights and histopathological findings from the two-generation rat reproductive study, as well as from the subchronic and chronic toxicity studies in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available which suggests that imazapyr would be associated with endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* The Theoretical Maximum Residue Concentrations (TMRC) of imazapyr on or in field corn are:

- 0.000070 mg/kg b.w./day for the general U.S. population
- 0.000142 mg/kg b.w./day for non-nursing infants
- 0.000165 mg/kg b.w./day for children 1 to 6 years of age
- 0.000123 mg/kg b.w./day for children 7 to 12 years of age.

These values are calculated from the proposed 0.05 ppm tolerance of imazapyr on corn using a ''worse case'' estimate of dietary exposure. This conservative estimate assumes that 100 percent of all field corn is treated with imazapyr and that the residues of imazapyr on corn are at the tolerance level (0.05 ppm). In reality, field trials with sampling at least 30 days after treatment resulted in no residues above the analytical method limit of quantitation (0.05 ppm).

Dietary exposure to residues of imazapyr in or on food will be limited to residues on corn. Field corn grain, forage, fodder and milled byproducts could be fed to animals. However, there is no reasonable expectation that measurable residues of imazapyr will occur in meat, milk, poultry or eggs from the proposed use. There are no other established tolerances for imazapyr, and there are no other registered uses for imazapyr on food or feed crops in the United States.

With a Reference Dose (RfD) of 2.50 mg/kg b.w./day, the dietary exposure for this proposed use will utilize only 0.0028 percent of the RfD for the general U.S. population.

ii. *Drinking water.* There is no available information about imazapyr exposure via levels in drinking water. Imazapyr has been registered for non-crop uses for 12 years and there are no confirmed findings in either ground or surface water from these uses. Low initial soil residue levels due to low application rates (0.014 lb. ae/acre) contribute to the minimal risk of exposure to imazapyr in drinking water from this use.

EPA has not established a Maximum Concentration Level for residues of imazapyr in drinking water under the Safe Drinking Water Act, because imazapyr is unlikely to be found in groundwater.The low level of mammalian toxicity further supports the lack of real risk of imazapyr to humans. A Lifetime Health Advisory level for imazapyr in drinking water calculated by EPA procedures would be 17.5 mg/liter, assuming a 20 percent relative contribution from water. There is a reasonable certainty that no harm will result from dietary exposure to imazapyr, because dietary exposure to residues on food will use only a small fraction of the Reference Dose (including exposure of sensitive populations), and exposure through drinking water is expected to be insignificant.

2. *Non-dietary exposure.* There is no available information quantifying non-dietary exposure to imazapyr. However, based on physical and chemical characteristics of the compound, the use patterns, and available information concerning its environmental fate, non-dietary exposure is expected to be negligible.

Currently, registrations for imazapyr limit use to non-crop sites. Labeled use sites for one group of imazapyr products include railroad, utility, pipeline, and highway rights-of-way, utility plant sites, petroleum tank farms, pumping installations, fence rows, storage areas, non-irrigation ditchbanks, under asphalt, under pond liners, wildlife management areas, forestry site preparation, and other non-crop areas. Imazapyr products for the above uses are clearly not intended for use in residential or recreational areas that have a high potential of exposure for the general population. The labels state that these imazapyr products are not for use on lawns, walks, driveways, tennis courts or similar areas.

Other imazapyr products are labeled as plant growth regulators for applications to limited care-low maintenance areas, such as roadsides, airports, fairgrounds, and golf course roughs, and to limited wear areas such as industrial, institutional, and cemetery grounds. These low rate uses entail minimal exposure potential for the general population. The product labeling does not allow use on turf that is being grown for sale or other commercial use, such as sod.

There are imazapyr products marketed for residential use. These total vegetation control products are used for spot treatments or bare ground applications. These products are to be applied only where no plant growth is desired and are not to be used on lawns. Therefore, even for the limited residential uses, the potential for exposure is minimal.

D. Cumulative effects

Imazapyr belongs to the imidazolinone class of compounds. Other compounds in this class are registered herbicides. However, the herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxyacid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the low toxicity of the imidazolinone compounds in animals. We are aware of no information to indicate or suggest that imazapyr has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population.* The RfD of 2.50 mg/kg b.w./day, supported by a NOEL of 10,000 ppm or 250 mg/kg b.w./day from the 1–year dog study and a safety (uncertainty) factor of 100, is the ''worst case'' estimate of chronic dietary exposure of imazapyr in corn. This proposed application will utilize only 0.0028 percent of the RfD for the general U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD which represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The complete and reliable toxicity data, indicating low potential mammalian toxicity, and the conservative chronic exposure assumptions support the conclusion that there is a ''reasonable certainty of no harm'' from aggregate exposure to imazapyr residues.

2. *Infants and children.* The conservative estimates for dietary exposure to imazapyr from food, as described above in Unit C of this notice of filing, indicate that exposure of imazapyr on corn will utilize approximately 0.0057 percent of the RfD for non-nursing infants, approximately 0.0066 percent for the RfD for children 1 to 6 years of age, and approximately 0.0049 percent of the RfD for children seven to 12 years of age.

Furthermore, no developmental, reproductive or fetotoxic effects were noted at the highest doses of imazapyr tested. The only maternal effect in the rat teratology study was increased salivation in the highest dose group. The NOEL used to calculate the RfD for the general U.S. population is 250 mg/kg b.w./day derived from the 1–year chronic toxicity study in dogs. That NOEL is lower than the developmental NOELs for the teratology studies in rabbits and rats (1.6 and 4x, respectively), as well as lower than the NOEL for the two-generation reproduction study in male and female rats (3.2 to 3.9x).

The EPA has found the database relative to pre-and post-natal effects for children to be complete, valid and reliable. There were no effects observed in the offspring in the developmental studies in rats and rabbits. In the reproduction study, the lack of any pup effects observed at 10,000 ppm (the highest dose tested) in their growth and development from parturition through adulthood, suggests that there is no additional sensitivity for infants and children. Therefore, an additional safety (uncertainty) factor is not warranted and the RfD of 2.50 mg/kg b.w./day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There are no Codex maximum residue levels established for residues of imazapyr on field corn grain, fodder or forage.

II. Administrative Matters

Interested persons are invited to submit comments on the notice of filing. Comments must bear a notation indicating the document control number, [PF–682]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket number [PF–682] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp=Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 11, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–32091 Filed 12–17–96; 8:45 am]
BILLING CODE 6560–50–F

[OPPT–59356; FRL–5577–8]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–97–1 and TME–97–2. The test marketing conditions are described below.

DATES: This notice becomes effective December 10, 1996. Written comments will be received until January 2, 1997.

ADDRESSES: Written comments, identified by the docket numbers [OPPT–59356] and the specific TME numbers should be sent to: TSCA nonconfidential center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59356]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on these notices may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

FOR FURTHER INFORMATION CONTACT: Shirley D. Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447H, 401 M St. SW., Washington, DC 20460, (202) 260–3780; Howard.sd@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–97–1 and TME–97–2. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the applications. All other conditions and restrictions described in the applications and in these notices must be met.

A notice of receipt of these applications was not published in advance of approval. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemptions if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–97–1 and TME–97–2. A bill of lading accompanying each shipment must state that the use of the substances are restricted to that approved in the TMEs. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substances.

TME–97–1 and TME–97–2

Date of Receipt: October 28, 1996. The extended comment periods will close (*insert date 15 days after date of publication in the* Federal Register).

Applicant: Confidential.

Chemical: (G) Carboxylic acid amides.

Use: (G) Fuel additive.

Production Volume: 181,818 kilograms.

Number of Customers: Confidential.

Test Marketing Period: Confidential. Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substances. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

A record has been established for these notices under docket number [OPPT–59356] (including comments and data submitted electronically as described above). A public version of these record, including printed page versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA nonconfidential information center (NCIC), Rm. NEB–607, 401 M St., SW., Washington, DC 20460. Electronic

comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for these notices, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Test marketing exemption.

Dated: December 10, 1996.

Paul J. Campanella,

Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 96–32092 Filed 12–17–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2170]

Petitions for Reconsideration of Action in Rulemaking Proceedings

December 13, 1996.

Petitions for reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed January 2, 1997. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations. (New Albany, IN)

Number of Petition Filed: 1

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Sylvester, GA) (MM Docket No. 90–192)

Number of Petition Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–32022 Filed 12–17–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3:15 p.m. on Wednesday, December 11, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the Corporation's corporate and supervisory activities, and (2) personnel matters.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Ms. Judith A. Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii), of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: December 12, 1996.

Federal Deposit Insurance Corporation

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–32177 Filed 12–16–96; 10:24 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations that meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: January 17, 1997.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the Federal Register on Friday, June 21, 1996, 61 FR 32036–32256.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 61 FR 32032, also on June 21, 1996. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office.

The Hotel and Motel Fire Safety Act of 1990 National Master List is now accessible electronically. The National Master List Web Site is located at: http://www.usfa/fema.gov/hotel/index.htm

Visitors to this web site will be able to search, view, download and print all or part of the National Master List by State, city, or hotel chain. The site also provides visitors with other information related to the Hotel and Motel Fire Safety Act. Instructions on gaining access to this information are available as the visitor enters the site.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State

offices. Each update contains or may contain three categories: ''Additions;'' ''Corrections/changes;'' and ''Deletions.'' For the purposes of the updates, the three categories mean and include the following:

''Additions'' are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

''Corrections/changes'' are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

''Deletions'' are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

Dated: December 13, 1996.

John P. Carey,

General Counsel.

The update to the national master list for the month of November 1996 follows:

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST
11/12/96 UPDATE

Index and property name	PO Box/Rt. No. street address	City, state/zip	Phone
Additions			
CA:			
CA1480 Olive Grove Suites	6143 Auburn Blvd	Citrus Heights, CA 95621	(916) 725–0100
CA1481 Summerfield Suites Hotel—El Segundo.	810 S. Douglas Ave	EL Segundo, CA 90245	(310) 725–0100
CA1482 Town and Country Resort Hotel	500 Hotel Circle North	San Diego, CA 92108	(619) 294–8577
CO:			
CO0307 Comfort Inn of Alamosa	Box 1780, 6301 Road 7 S	Alamosa, CO 81101	(719) 587–9000
CO0303 Burlington Comfort Inn	282 S. Lincoln	Burlington, CO 80807	(719) 346–7676
CO0303 Ramada Limited	262 Commerce St	Craig, CO 81625	(970) 824–9282
CO0305 Cherry Creek Inn	600 S. Colorado Blvd	Denver, CO 80222	(303) 757–3341
CO0301 Days Hotel Denver Airport	4590 Quebec St	Denver, CO 80216	(303) 320–0260
CO0308 Holiday Inn of Estes Park	101 S. St. Vrain	Estes Park, CO 80517	(970) 586–2332
CO0306 Marys Lake Lodge	2625–A Marys Lake Rd	Estes Park, CO 80517	(970) 586–5308
CO0302 Table Mountain Inn	1310 Washington Ave	Golden, CO 80401	(303) 277–9898
CO0309 LaQuinta Inn #946—Denver/ Greenwood Village.	7077 S. Clinton Dr	Greenwood Village, CO 80112	(303) 840–1104
CO0299 Econo Lodge	PO Box 1521, 37760 Hwy 50 W	Gunnison, CO 81230	(970) 641–1000
CO0304 Comfort Inn—Salida	315 E. Rainbow Blvd	Salida, CO 81201	(800) 228–5150
FL:			
FL4289 LaQuinta Inn #942—Ft. Lauderdale/Cypress.	999 West Cypress Creek Road	Ft. Lauderdale, FL 33309	(305) 491–7666
FL4288 Quality Inn of Jennings	Box 89, I–75 & St. Road 143	Jennings, FL 32053	(904) 938–3501
FL4287 Shoney's Inn & Suites	8080 N. Davis Highway	Pensacola, FL 32514	(904) 484–8070
FL4290 Sleep Inn—Pensacola	2591 Wilde Lake Boulevard	Pensacola, FL 32526	(904) 941–0908
KS:			
KS0163 Days Inn	1818 Comanche	Dodge City, KS 67801	(316) 275–5095
KS0161 Holiday Inn Express	2320 West Wyatt Earp	Dodge City, KS 67801	(316) 227–5000
KS0162 Holiday Inn Express Hotels & Suites.	2502 East Kansas	Garden City, KS 67846	(316) 275–5900
NE:			
NE0123 Holiday Inn Express	1133 Belmont Ave	Lincoln, NE 68521	(402) 435–0200
PA:			
PA0442 Hampton Inn—Gettysburg	1280 York Road	Gettysburg, PA 17325	(717) 338–9121
TN:			
TN0313 Extended Stay America	6240 Airport Dr	Chattanooga, TN 37421	(423) 892–1315
TN0312 Residence Inn by Marriott	215 Chestnut St	Chattanooga, TN 37402	(423) 266–0600
TN0314 Fairfield Inn by Marriott Clarksville	110 West Field Drive	Clarksville, TN 37040	(615) 551–3200
TN0315 Travelodge	2025 S. Church St	Murfreesboro, TN 37130	(615) 896–2320
WV:			
WV0243 Econo Lodge	3325 US Rt. 60 East	Huntington, WV 25705	(304) 529–1331
WV0241 Lost River State Park—Cabins	HC 67 Box 24	Mathias, WV 26812	(304) 897–5372
WV0242 Town 'n' Country Motel	805 Oakvale Rd	Princeton, WV 24740	(304) 425–8516
WV0244 Wells Inn	316 Charles St	Sistersville, WV 26175	(304) 652–1312
WY:			
WY0092 The Inn at Lander—Best Western	620 Grand View Drive	Lander, WY 82520	(307) 322–2847
WY0091 Kings Inn Torrington	1555 Main St	Torrington, WY 82240	(307) 532–4011
Corrections/Changes			
CA:			
CA0608 Wyndham Garden Hotel—Pleasanton.	5990 Stoneridge Mall Rd	Pleasanton, CA 94588	(510) 463–3330
CA0248 Gold Pan Motel	3646, 200 Crescent	Quincy, CA 95971	(916) 283–3686
CO:			
CO0277 Regal Harvest House Hotel	1345 28th St	Boulder, CO 80302	(303) 443–3850

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST
11/12/96 UPDATE—Continued

Index and property name	PO Box/Rt. No. street address	City, state/zip	Phone
CO0246 Adam's Mark Hotel	1550 Court Pl	Denver, CO 80202	(303) 893–3333
CO0267 Holiday Inn Denver Downtown	1450 Glenarm Pl	Denver, CO 80202	(303) 573–1450
FL:			
FL4285 LaQuinta Inn #925—Coral Gables	3701 University Drive	Coral Springs, FL 33065	(305) 753–9000
FL2086 Sleep Inn Airport	13651 Indian Paint Lane	Ft. Myers, FL 33912	(800) 435–8234
FL4135 Howard Johnson Orlando Arena	929 W. Colonial Dr	Orlando, FL 32804	(407) 843–1360
FL4286 LaQuinta Inn #923—Orlando International.	8300 Jamaican Court	Orlando, FL 32819	(407) 351–1660
FL1593 Beachside Resort & Conference Center.	14 Via Deluna	Pensacola Beach, FL 32561–2098	(904) 232–2416
FL1621 Best Western	13585 Perdido Key Dr	Perdido Key, FL 3250	(904) 492–2755
FL4233 Sleep Inn of Sarasota	900 University Parkway	Sarasota, FL 34234	(800) 281–5917
OR:			
OR0011 CIA Inc Comfort Inn	251 Airport Rd. SE	Albany, OR 97321	(541) 928–0921
OR0121 Regency Inn	50 Lowe Rd	Ashland, OR 97520	(541) 482–4700
OR0010 Best Western Sunridge Inn	One Surridge Ln.	Baker City, OR 97814	(541) 523–6444
OR0013 Eldorado Inn	695 Campbell St	Baker City, OR 97814	(541) 523–6494
OR0014 Quality Inn	810 Campbell St	Baker City, OR 97814	(541) 523–2242
OR0015 Super 8 Motel Baker City	250 Campbell St	Baker City, OR 97814	(541) 523–8282
OR0172 Bend Alpine Hotel	19 SW Century Drive	Bend, OR 97702	(541) 389–3813
OR0017 Best Western Entrada Lodge	19221 Century Dr	Bend, OR 97702	(541) 382–4080
OR0018 Best Western Woodstone Inn	721 NE 3rd St	Bend, OR 97701	(541) 382–1515
OR0019 Comfort Inn Bend	61200 S Hwy	Bend, OR 97702	(541) 388–2227
OR0020 Hampton Inn Bend	15 NE Butler Rd	Bend, OR 97701	(541) 388–4114
OR0199 Rock Springs Guest Ranch	64201 Tyler Rd	Bend, OR 97701	(541) 382–1957
OR0140 Shilo Inn Bend	3105 OB Riley Rd	Bend, OR 97701	(541) 641–6565
OR0021 The Riverhouse	3075 N. Hwy. 97	Bend, OR 97701	(541) 389–3111
OR0006 Nugget Inn	105 Front St. SW	Boardman, OR 97818	(541) 481–2375
OR0022 Harbor Inn Motel	15991 Hwy. 101 S	Brookings, OR 97415	(541) 469–3194
OR0184 Motel 6	997 Oregon Ave	Burns, OR 97720	(541) 573–3013
OR0151 Ponderosa Motel	477 W. Monroe	Burns, OR 97720	(541) 573–2047
OR0023 House on the Metolius	PO Box 682, Forest Rd. 1420	Camp Sherman, OR 97730	(541) 595–6620
OR0192 Capt. John's Motel	8061 Kingfisher Dr	Charleston, OR 97420	(541) 888–4041
OR0024 Desert Inn Motel	PO Box 148	Christmas Valley, OR 97641	(541) 576–2262
OR0158 Motel 6 #1244	1445 Bayshore Dr	Coos Bay, OR 97420	(541) 267–7171
OR0143 Red Lion Coos Bay	1313 N. Bayshore Dr	Coos Bay, OR 97420	(541) 267–4141
OR0167 Best Western Grand Manor Inn	925 NW Garfield	Corvallis, OR 97330	(541) 758–8571
OR0028 Corvallis Budget Inn Motel	1480 SW 3rd St	Corvallis, OR 97333	(541) 752–8756
OR0029 Shanieo Inn	1113 NW 9th	Corvallis, OR 97330	(541) 754–7474
OR0166 Best Western the Village Green Resort.	725 Row River Rd	Cottage Grove, OR 97424	(541) 942–2491
OR0147 Cottage Grove Comfort Inn	845 Gateway Blvd	Cottage Grove, OR 97424	(541) 942–9747
OR0117 Motel Orleans	PO Box 988, 345 E. Oregon Ave	Creswell, OR 97426	(541) 895–3341
OR0193 Gracie's Landing Bed & Breakfast Inn.	235 SE Bay Vies Ave	Depoe Bay, OR 97341	(541) 765–2322
OR0030 Balch Hotel	40 S. Main	Dufur, OR 97021	(541) 467–2277
OR0130 Shilo Inn Troy Lodge	Troy Rt. Bx85	Enterprise, OR 97828	(541) 641–6565
OR0171 Wilderness Inn Motel	301 W. North St	Enterprise, OR 97828	(541) 426–4535
OR0118 Eugene Hilton Hotel	66 E. Sixth Ave	Eugene, OR 97401	(541) 342–2000
OR0031 Franklin Inn	1857 Franklin Blvd	Eugene, OR 97403	(541) 342–4804
OR0032 Getty's Emerald Garden Bed & Breakfast.	640 Audel Ave	Eugene, OR 97404	(541) 688–6344
OR0033 Holiday Inn Eugene	225 Coburg Rd	Eugene, OR 97401	(541) 342–5181
OR0159 Motel 6 #418	3752 International Ct	Eugene, OR 97477	(541) 741–1105
OR0191 Phoenix Inn	850 Franklin Blvd	Eugene, OR 97401	(541) 669–6500
OR0125 Red Lion Eugene	205 Coburg Road	Eugene, OR 97401	(541) 342–5201
OR0195 Salishan Lodge	7760 Hwy 101 N	Gleneden Beach, OR 97388	(541) 764–2371
OR0035 AHLF House Bed & Breakfast	762 NW 6th St	Grants Pass, OR 97526	(541) 474–1374
OR0036 Best Western Grants Pass Inn	111 NE Agness Ave	Grants Pass, OR 97526	(541) 476–1117
OR0181 Grants Pass Shilo Inn	1880 NW 6th St	Grants Pass, OR 97526–1038	(541) 479–8391
OR0154 Holiday Inn Express Grants Pass	105 NE Agness Ave	Grants Pass, OR 97526	(541) 471–6144
OR0037 Inn at the Rogue Best Western	8959 Rogue River Hwy	Grants Pass, OR 97527	(541) 582–2200
OR0161 Motel 6 #253	1800 North East Seventh	Grants Pass, OR 97526	(541) 474–1331
OR0110 Best Western Beachfront Inn	16008 Boat Basin Rd	Harbor, OR 97418	(541) 469–7779
OR0211 Best Western Hood River Inn	1108 E. Marina Way	Hood River, OR 97031	(541) 386–2200
OR0111 Hood River Hotel	102 Oak St	Hood River, OR 97031	(541) 386–1900
OR0040 Love's Riverview Lodge	1505 Oak St	Hood River, OR 97031	(541) 386–8719
OR0041 Best Western Inn	315 W. Main St	John Day, OR 97845	(541) 575–1700
OR0152 Dreamers Lodge	144 North Canyon Blvd	John Day, OR 97845	(541) 575–0526
OR0120 Best Western Klamath Inn	4061 S. 6th St	Klamath Falls, OR 97603	(541) 882–1200
OR0044 Econo Lodge	75 Main St	Klamath Falls, OR 97601	(541) 884–7735

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST
11/12/96 UPDATE—Continued

Index and property name	PO Box/Rt. No. street address	City, state/zip	Phone
OR0186 Motel 6	5136 S. 6th Street	Klamath Falls, OR 97601	(541) 884–2110
OR0142 Red Lion Klamath Falls	3612 S. Sixth	Klamath Falls, OR 97601	(541) 882–8864
OR0112 Comfort Inn Lagrande	1711 21st St	Lagrande, OR 97367	(541) 963–3100
OR0206 Best Western Pony Solidger Motor Inn.	2612 Island Ave	Lagrande, OR 97850	(541) 963–7195
OR0208 Mr. Sandman Motel	2410 E. R Ave	Lagrande, OR 97850	(541) 963–3707
OR0205 Royal Motor Inn	1510 Adams Ave	Lagrande, OR 97850	(541) 963–3588
OR0180 Lakeview Lodge Motel	301 North 9 Street	Lakeview, OR 97630	(541) 947–
OR0200 Best Western Rama Inn Lincoln City.	4430 SE Highway 101	Lincoln City, OR 97367	(541) 994–6060
OR0047 Long Creek Lodge Motel	171 W. Main	Long Creek, OR 97856	(541) 421–9212
OR0048 Juniper Motel	414 N. Hwy. 26	Madras, OR 97741	(541) 475–6186
OR0209 Leisure Inn	12 SW 4th St	Madras, OR 97741	(541) 475–6141
OR0049 Sonny's Motel Rest	1539 SW Hwy. 97	Madras, OR 97741	(541) 475–7217
OR0050 Safari Motor Inn	345 M Hwy. 99 W	McMinnville, OR 97128	(503) 725–5187
OR0051 Horizon Motor Inn	1154 Barnett Rd	Medford, OR 97504	(541) 779–5085
OR0187 Motel 6	US 5 Rt. 62, 2400 Biddle Road	Medford, OR 97504	(541) 779–0550
OR0162 Motel 6 #89	950 Alba Dr	Medford, OR 97504	(541) 773–4290
OR0194 Red Lion/Medford	200 North Riverside	Medford, OR 97501	(541) 779–5811
OR0053 Rogue Regency Inn	2345 Crater Lake Hwy	Medford, OR 97504	(541) 770–1234
OR0137 Shilo Inn Medford	2111 Biddle Rd	Medford, OR 97504	(541) 641–6565
OR0058 Hotel Newport	3019 N Coast Hwy 101	Newport, OR 98365	(541) 265–9411
OR0135 Shilo Inn Newport	536 SW Elizabeth	Newport, OR 97365	(541) 641–6565
OR0059 Sylvia Beach Hotel	267 NW Cliff St	Newport, OR 97365	(541) 265–5428
OR0124 Val U Inn	531 SW Fall St	Newport, OR 97365	(541) 265–6303
OR0057 Viking's Condominiums	729 NW Coast St	Newport, OR 97365	(541) 265–2477
OR0056 Parkside Motel	1480 Sherman Ave	North Bend, OR 97459	( ) –
OR0061 Oak Ridge Inn Best Western	47445 Hwy. 58	Oak Ridge, OR 97463	(541) 782–2212
OR0062 Best Western Inn	251 Goodfellow St	Ontario, OR 97915	(541) 889–2600
OR0007 Howard Johnson Lodge #1201	1249 Tapadeka Ave	Ontario, OR 97914	(541) 889–8621
OR0185 Motel 6	275 NE 12 St	Ontario, OR 97914	(541) 889–6617
OR0063 Super 8	266 Goodfellow St.	Ontario, OR 97914	(541) 889–8282
OR0160 Motel 6 #349	325 SE Nye Ave	Pendleton, OR 97801	(541) 276–3160
OR0122 Red Lion Indian Hills	304 SE Nye Ave	Pendleton, OR 97801	(541) 276–6111
OR0089 Inn at Eagle Crest	1512 Cline Falls Rd	Redmond, OR 97756	(541) 923–2453
OR0202 Quality New Redmond Hotel	521 South Sixth St	Redmond, OR 97756	(541) 923–7378
OR0091 Best Western Salbasgeon Inn of Reedsport.	1400 Hwy. Ave	Reedsport, OR 97467	(541) 271–4831
OR0004 Salbasgeon Inn of Umpqua	45209 Hwy. 38	Reedsport, OR 97467	(541) 271–2025
OR0155 Best Western Garden Villa Motel	760 NW Garden Valley Blvd	Roseburg, OR 97470	(541) 672–1601
OR0098 Best Western Ponderosa Lodge	PO Box 218	Sisters, OR 97759	(541) 549–1234
OR0126 Red Lion Springfield	3280 Gateway Road	Springfield, OR 97477	(541) 726–8181
OR0149 Rodeway Inn	3480 Hutton St	Springfield, OR 97477	(541) 746–8471
OR0139 Shilo Inn Eugene	3350 Gateway	Springfield, OR 97477	(541) 641–6565
OR0099 Springfield Shilo Inn	3350 Gateway	Springfield, OR 97477–1094	(541) 641–6565
OR0188 Kah Nee Ta Resort	PO Box K, 100 Main St	Warm Sprints, OR 97761	(541) 553–1112
TN:			
TN0009 Comfort Inn-Brownsville	2600 Anderson Ave	Brownsville, TN 38012	(901) 772–4082
TN0241 Comfort Inn-Chattanooga	7717 Lee Hwy	Chattanooga, TN 37421	(423) 894–5454
TN0272 Comfort Inn-Clarksville-North	I–24, Exit 4, 111 Westfield Dr	Clarksville, TN 37040	(615) 647–6144
TN0244 Comfort Inn-Cookeville	1100 S Jefferson	Cookeville, TN 38501	(615) 528–1040
TN0245 Comfort Inn-Covington	901 Hwy. 51 N	Covington, TN 38019	(901) 475–0380
TN0196 Comfort Inn-Dyersburg	815 Reelfoot Dr	Dyersburg, TN 38024	(901) 285–6951
TN0216 Comfort Inn-Elizabethton	1515 19E Bypass	Elizabethton, TN 37643	(423) 542–4466
TN0193 Comfort Inn-Kingsport	100 Indian Ctr Ct	Kingsport, TN 37660	(423) 378–4418
TN0250 Comfort Inn-Kingsport	4624–4628 Fairlane Dr	Kingsport, TN 37663	(423) 234–7447
TN0218 Comfort Inn-Knoxville-East	7524 Strawberry Plains Pk	Knoxville, TN 37924	(423) 932–1217
TN0200 Comfort Inn-Knoxville-West	11748 Snyder Rd. I–40 Exit 373	Knoxville, TN 37922	(423) 675–5566
TN0201 Comfort Inn-Knoxville	5334 Central Ave Pk	Knoxville, TN 37912	(423) 688–1010
TN0253 Comfort Inn-Lebanon	829 S Cumberland St	Lebanon, TN 37008	(615) 444–1001
TN0153 Comfort Inn-Manchester	PO Box 8140, Rt. 8 US Hwy. 41 S. Exit 114.	Manchester, TN 37355	(615) 728–0800
TN0223 Comfort Inn-Memphis	2889 Austin Peay Hwy	Memphis, TN 38128	(901) 386–0033
TN0260 Comfort Inn-Powell	323 E Emory Rd	Powell, TN 37849	(423) 938–5500
TN0262 Comfort Inn-Sweetwater	I 75 and Hwy 68	Sweetwater, TN 37874	(423) 337–3353
TN0263 Comfort Inn-Sweetwater	803 S Main St	Sweetwater, TN 37874	(423) 337–6646
Deletions			
None			

[FR Doc. 96–32105 Filed 12–17–96; 8:45 am]
BILLING CODE 6718–08–U

FEDERAL RESERVE SYSTEM

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 January 13, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation Inc., St. Louis, Missouri, and Ameribanc, Inc., St. Louis, Missouri; to acquire and to merge with Mark Twain Bancshares, Inc., St. Louis, Missouri, and thereby indirectly acquire Mark Twain Bank, Ladue, Missouri; Mark Twain Kansas City Bank, Kansas City, Missouri, and Mark Twain Illinois Bank, Belleville, Illinois.

Board of Governors of the Federal Reserve System, December 12, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–32021 Filed 12-17-96; 8:45 am]
BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice 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 question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal 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 on this question 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, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 1997.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Bank of Boston Corporation, Boston, Massachusetts; The Bank of New York Company, Inc., New York, New York; The Chase Manhattan Corporation, New York, New York; Citicorp, New York, New York; First Union Corporation, Charlotte, North Carolina; Fleet Financial Group, Inc., Providence, Rhode Island; The Governor and Company of the Bank of Ireland, Dublin, Ireland; The Royal Bank of Scotland Group plc, Edinburgh, Scotland; The Royal Bank of Scotland, plc, Edinburgh, Scotland; Citizens Financial Group, Inc., Providence, Rhode Island; HSBC Holdings PLC, London, United Kingdom; HSBC Holdings BV, Amsterdam, Netherlands; HSBC Americas, Inc., Buffalo, New York; and National Westminster Bank PLC, London, England; to acquire Card Alert Services, Inc., Arlington, Virginia, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Regions Financial Corporation, Birmingham, Alabama; to acquire Florida FirstBank, Panama City, Florida, and thereby indirectly acquire Florida FirstBank, Panama City, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 13, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–32108 Filed 12-17-96; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the

Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 111196 AND 112296

Name of acquiring person; name of acquired person; name of acquired entity	PMN number	Date terminated
Frank Perrotti, Jr.; WMX Technologies, Inc.; Waste Management of Connecticut, Inc	96–2621	11/12/96
Charterhouse Equity Partners II, L.P.; Prime Cable of Hickory, L.P.; Prime Cable of Hickory, L.P	97–0233	11/14/96
Jean-Raymond Boulle; Nord Resources Corporation; Nord Resources Corporation	97–0279	11/14/96
Safmarine and Rennies Holdings Limited; Griffin Gaming & Entertainment, Inc.; Griffin Gaming & Entertainment, Inc	97–0305	11/14/96
Caledonia Investments plc; Griffin Gaming & Entertainment, Inc.; Griffin Gaming & Entertainment, Inc	97–0314	11/14/96
Behavioral Healthcare Corporation; Community Psychiatric Centers; Community Psychiatric Centers	97–0212	11/15/96
Community Psychiatric Centers; Behavioral Healthcare Corporation; Behavioral Healthcare Corporation	97–0231	11/15/96
Energy Ventures, Inc.; Weatherford Enterra, Inc.; Arrow Completion Systems, Inc	97–0252	11/15/96
Stephen Adams; John A. Ehlert; Expositions Group, Inc., Ehlert Publishing Group, Inc	97–0262	11/15/96
Conseco, Inc.; Transport Holdings, Inc.; Transport Holdings, Inc	97–0272	11/15/96
Jacor Communications, Inc.; Palmer Communications Incorporated; Palmer Broadcasting Limited Partnership	97–0315	11/15/96
The Walt Disney Company; Capital Cities/ABC, Inc.; Capital Cities/ABC, Inc	95–2375	11/18/96
Young Broadcasting Inc.; The Walt Disney Company; KCAL Broadcasting, Inc. and Fidelity Television, Inc	96–2117	11/18/96
Metallgesellschaft AG; Safic-Alcan, S.A; Safic-Alcan, S.A	97–0253	11/18/96
Agrium Inc.; Viridian Inc.; Viridian Inc	97–0275	11/18/96
Carriage Services, Inc; CNM; CNM	97–0312	11/18/96
Kidd, Kamm Equity Partners, LP; The Procter & Gamble Company; The Procter & Gamble Company	97–0316	11/18/96
Katy Industries, Inc.; Robert Stephen Holdings, Ltd.; Woods Industries, Inc. & Woods Worldwide, Ltd	97–0326	11/18/96
Code, Hennessy & Simmons II, L.P.; HIG Investment Group, L.P.; Connor AGA Sports Flooring Corporation	97–0329	11/18/96
Castle Harlan Partners II, L.P.; Praxair, Inc.; Statia Terminals, Inc	97–0331	11/18/96
Mail-Well, Inc.; Sheppard Poorman Communications Corporation; Shephard Poorman Communications Corporation	97–0333	11/18/96
Hollinger Inc.; Southam Inc.; Southam Inc	97–0335	11/18/96
Cincinnati Bell Inc.; Joseph J. Jacoboni; Software Support, Inc	97–0343	11/18/96
KLC Associates, L.P.; Kindercare Learning Centers, Inc.; The TCW Group, Inc	97–0345	11/18/96
Mid-American Dairymen, Inc.; Golden Cheese A/S, a Denmark Corporation; Difcal Corporation	97–0346	11/18/96
Interpool, Inc.; Interpool Income Fund I, L.P.; Interpool Income Fund I, L.P	97–0348	11/18/96
First Chicago NBD Corporation; Figgie International, Inc.; Taylor Environmental Instruments Division	97–0328	11/19/96
Pameco Holdings, Inc.; Sid Harvey Industries, Inc.; Sid Harvey Industries, Inc	97–0344	11/19/96
Joe Balous; Molmec, Inc.; Molmec, Inc	97–0350	11/19/96
Richard J. Nash; Molmec, Inc.; Molmec, Inc	97–0351	11/19/96
Smiths Industries PLC; Gerald S. Fahringer; Leland Electrosystems, Inc	97–0352	11/19/96
Worthington Industries, Inc.; Edward J. Heavner; Plastics Manufacturing, Inc	97–0356	11/19/96
Liz Claiborne, Inc.; Dooney & Bourke P.R., Inc.; Dooney & Bourke P.R., Inc	97–0358	11/19/96
United Companies Financial Corporation; James N. Isaacs; Empire Funding Corp	97–0363	11/19/96
Hitachi, Ltd.; MAST Immunosystems, Inc.; MAST Immunosystems, Inc	97–0366	11/19/96
Paul A. Coury; Republic Industries, Inc.; Republic Industries, Inc	97–0373	11/19/96
Michael S. Egan; Republic Industries, Inc.; Republic Industries, Inc	97–0378	11/19/96
Republic Industries, Inc.; Michael S. Egan; Alamo Rent-a-Car, Inc., et al	97–0379	11/19/96
MBNA Corporation; Mid Am, Inc.; Mid Am, Inc.	97–0381	11/19/96
Provident Bancorp, Inc.; Vincent D. Rinaldi; Information Leasing Corp., Procurement Alternatives Corp	97–0390	11/19/96
Carleton College; ENSERCH Corporation; Enserch Development Corp. One, Inc., Ensat Northwest	97–0396	11/19/96
Apollo Real Estate Investment Fund II, L.P.; Santa Anita Operating Company; Santa Anita Operating Company	97–0204	11/20/96
United Brotherhood of Carpenters Pension Fund; Perini Corporation; Perini Corporation	97–0318	11/20/96
The Lubrizol Corporation; Marshall & Ilsley Corporation; CPI Engineering Services, Inc	97–0325	11/20/96
Hicks, Muse, Tate & Furst Equity Fund III, L.P.; Atrium Corporation; Atrium Corporation	97–0398	11/21/96
Schnitzer Steel Industries, Inc.; Proler International Corp.; Proler International Corp	96–2991	11/22/96
Howden Group plc; Harnischfeger Industries, Inc.; New Philadelphia Fan Company, Inc	97–0250	11/22/96
James J. Kim; NeoStar Retail Group, Inc. (Debtor-In-Possession); NeoStar Retail Group, Inc	97–0459	11/22/96
Leonard Riggio; NeoStar Retail Group, Inc. (Debtor-In-Possession); NeoStar Retail Group, Inc	97–0460	11/22/96

For further information contact: Sandra M. Peay or Renee A. Horton, Contact Representatives; Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–32024 Filed 12–17–96; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–239, Supplement 1]

Implementation of the Delegation of Lease Acquisition Authority

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin announces the details for the implementation of the Delegation of Lease Acquisition Authority from the General Services Administration.

FOR FURTHER INFORMATION CONTACT: Ms. Marjorie L. Lomax, Director, Evaluation and Outreach, Office of Real Property on (202) 501–0379 or the OGP homepage at: http://policyworks.gov/org/main/mp/linkit.htm.

SUPPLEMENTARY INFORMATION:

Public Buildings and Space

To: Heads of Federal Agencies

Subject: Implementation of the Delegation of Lease Acquisition Authority

1. *Purpose.* This bulletin announces the details for the implementation of the Delegation of Lease Acquisition Authority from the General Services Administration (GSA).

2. *Expiration.* This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. *Background.* a. The Administrator of General Services signed a letter on September 25, 1996, to the heads of all Federal agencies announcing the new ''Can't Beat GSA Leasing'' program and delegating authority to them to lease space on their own. This bulletin provides details about the delegation.

b. Federal agencies now have an option to either use GSA when a new lease is necessary or conduct the lease procurement themselves. The delegation program includes some conditions which agencies need to meet when the procurement is not performed by GSA. These conditions, discussed below, include training in lease contracting, and reporting data to GSA. Beyond this, GSA's Office of Governmentwide Policy (OGP) will evaluate the effectiveness of the Government's leasing program.

c. One condition of the delegation is the use of adequately trained lease contracting officers for procurements. To assist agencies in any training necessary for their personnel, we are sharing information on what GSA does. Our specialists complete, at a minimum, five basic formal training courses. Beyond these courses, GSA requires a combination of hands-on experience and additional training in development of space requirements, Federal real property leasing policies and procedures, space planning, budgeting and property administration. The basic formal training courses are:

1. Federal Real Property Leasing or Basic Lease Contracting.

2. Government Contract Negotiating or Federal Real Property Leases.

3. Cost and Price Analysis of Leasing Proposals.

4. Real Estate Law or Federal Real Property Lease Law.

5. Real Estate Appraisal Principles.

d. The OGP develops, coordinates and issues Governmentwide policy as well as evaluates and assesses the effectiveness of policy implementation. In evaluating the effectiveness of the leasing program, Federal agencies will be asked to work together with OGP on reviews of this program. Those agencies using the delegation are asked to provide OGP with leasing performance data every six months. This data, along with data from GSA's Public Buildings Service, will permit OGP to analyze and evaluate the overall Governmentwide leasing program and recommend fine-tuning to improve it. Initial reports should be provided by April 30, 1997, and include all actions through the end of March 1997. Specific information regarding data collection is noted below.

4. Action

a. Federal agencies operating under this program are subject to the conditions and reporting requirements of the delegation of authority.

(1) The semi-annual performance reports are due April 30, and October 31.

(2) Report should be sent to the GSA, OGP, Office of Real Property Policy (MP), 18th & F Streets, NW., Room 6223, Washington, DC 20405.

(3) Reports should be presented in a spreadsheet format with a disk containing the data.

(4) The following definitions are provided for reporting data:

(a) Contract Number.

(b) Building Address—Street address, city and state of the leased building.

(c) CBA—Is this building within the Central Business Area (CBA)? (Yes or No)

(d) Number of Offers Received—The number of offers received in response to the requirement.

(e) Rentable Sq. Ft.—The area for which rent is charged. It is based on the local commercial method of measurement.

(f) ANSI (BOMA) Usable Sq. Ft.—The assignable space used by the agency's personnel and furnishings. It is measured to the inside finish of the dominant portion (e.g. window glass line) of permanent exterior walls. It also includes circulation within the space assignment. This term replaces GSA's ''Occupiable'' space measurement.

(g) Rental Range—Provide the high and low dollar per sq. ft. rates for acceptable properties found during the market survey and from best and final offers received. (Specify method of measurement used for square foot rates.)

(h) Effective Rent Rate—The rate is obtained by dividing the total rent to be paid over the lease term (after deducting from the total rent any credits due such as cash payments to adjust for rent-free periods or stepped rents from the lessor) by the length of the lease term. This is then divided by the rentable square feet in the lease. Estimated CPI escalations and tax escalations are not to be included in this calculation.

(i) Annual Contract rent—Total annual rent.

(j) Effective date of Lease—Date the lease takes effect.

(k) Expiration Date—Date the current lease term expires.

(l) Lease Term—The specific terms of the lease including any cancellations or renewal rights.

(m) Completion Time—The total number of days required from GSA notice of no suitable available space to lease award.

(n) Build-Out Time—The total number of days required from contract award to space occupancy.

(o) Comments—This should include information pertinent to the leasing action including whether fully serviced or what services are not provided as part of the lease and the cost of such services (e.g. electricity, cleaning, etc.).

(b) Further information regarding this program may be obtained by contacting Ms. Marjorie L. Lomax, Director, Evaluation and Outreach, Office of Real Property on (202) 501–0379 or the OGP homepage at: http://policyworks.gov/org/main/mp/linkit.htm.

Dated: December 9, 1996.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 96–32061 Filed 12-17–96; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Cooperative Agreement with the National Minority AIDS Council

The Office of Minority Health (OMH), Office of Public Health and Science, announces that it will enter into an umbrella cooperative agreement with the National Minority AIDS Council (NMAC). This cooperative agreement will establish the broad programmatic framework in which specific projects can be funded as they are identified during the project period.

The purpose of this cooperative agreement is to assist NMAC in expanding and enhancing its activities relevant to HIV prevention, services, treatment and research in racial and ethnic minority populations, with the ultimate goal of improving the health status of minorities and disadvantaged people. OMH will provide consultation, including administrative and technical assistance as needed, for the execution and evaluation of all aspects of this cooperative agreement during this agreement. OMH will also participate and/or collaborate with the awardee in any workshops or symposia to exchange current information, opinions, and research findings during this agreement.

Authorizing Legislation

This cooperative agreement is authorized under Title XVII, section 1707(d)(1) of the Public Health Service Act, as amended by Pub. L. 101–527.

Background

Assistance will be provided only to the National Minority AIDS Council. No other applications are solicited. NMAC is the only organization capable of administering this cooperative agreement because it has:

1. Developed, expanded, and managed an infrastructure to coordinate and implement various educational programs within local communities and organizations that deal extensively with HIV in each of the four racial and ethnic minority populations served by the Office of Minority Health. The Council established national initiatives—e.g., conferences, public policy education program (including policy forums), technical assistance programs and publications (including newsletters, action alerts and training manuals)—that provide a foundation upon which to develop, promote, and manage HIV-related education and health-related programs aimed at preventing and reducing unnecessary morbidity and mortality and mortality rates among racial and ethnic minority populations.

2. Established itself and its members as a national association of professionals who serve as leaders and experts in planning, developing, implementing, promoting and evaluating HIV-related education and policy campaigns, both nationally and locally, aimed at reducing the impact of HIV in minority populations and improving the minority community's overall well being.

3. Developed a base of critical knowledge, skills, and abilities related to serving minority individuals and organizations with a range of HIV-related health and social problems. Through the collective efforts of its members, community-based organizations, and volunteers, NMAC has demonstrated (1) the ability to work with minority and non-minority organizations, the Federal Government, academic institutions and health groups on mutually beneficial education, research, and health endeavors relating to the goal of health promotion and disease prevention among racial and ethic minority populations; (2) the national leadership necessary to focus the nation's attention on minority-related HIV issues; and (3) the leadership needed to assist health care professionals to work more effectively with racial/ethnic minority communities.

4. Developed a national network of individuals, community-based organizations, and state, regional and national health and civil rights organizations committed to addressing the HIV prevention, service, treatment and research needs of individuals affected and infected by HIV and AIDS.

This cooperative agreement will be awarded in FY 1997 for a 12-month budget period within a project period of 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where to Obtain Additional Information

if you are interested in obtaining additional information regarding this project, contact Mr. Matthew Murguia, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 443–9923.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 96–32015 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–17–M

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Study of Benefits for Head Start Program Employees.

OMB No.: New collection.

Description: Head Start Legislation requires that the Secretary conduct a study regarding the benefits available to individuals employed by Head Start Agencies including a description of benefits provided and to make recommendations about increasing the access of the individuals to benefits including access to a retirement pension program. The attached instrument is a survey designed to collect information about present benefits provided to employees.

Respondents: Not-for-profit institutions and households.

Annual Burden Estimates:

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
Staff Questionnaire	360	1	.5	180
H.S. Program Director Questionnaire	360	1	2	720
Dir. of Non-H.S. Child Care Program	5	1	2	10

Estimated Total Annual Burden Hours: 910

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 11, 1996.

Douglas J. Gedesky,

Reports Clearance Officer.

[FR Doc. 96–32078 Filed 12–17–96; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

[INFO–97–31]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Evaluation of the use of data transmitted through the National Electronic Telecommunications System for Surveillance (NETSS) and the Public Health Laboratory Information System (PHLIS)—New—A questionnaire has been designed to collect information for the project entitled: ''Evaluation of the use of data transmitted through the National Electronic Telecommunications System for Surveillance (NETSS) and the Public Health Laboratory Information System (PHLIS)''. The purpose of the project is to develop and implement a comprehensive evaluation strategy which will provide the Division of Public Health Surveillance and Informatics (proposed), Epidemiology Program Office (EPO), and the National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC) with the capacity to assess the degree to which data processed locally and at CDC after transmission through NETSS and PHLIS are used by State and Local Health Departments. This evaluation will encompass: (1) Dissemination of processed data, (2) Access to disseminated data, and (3) Use of accessed data for analysis by State and Local health authorities. The information gathered will be analyzed, in conjunction with data collected from other sources, to address these issues. The results of the project will assist the Division of Public Health Surveillance and Informatics, EPO, and the National Center for Infectious Diseases in carrying out CDC's mission of protecting the health of the United States public, through improved use of surveillance data by public health officials at local, state, and national levels. In order to focus efforts and resource allocation, a clear understanding of the barriers to access and use of NETSS and PHLIS data is needed. The estimated total cost for respondents is $1,875.

Respondents	No. of respondents	No. of responses/respondent	Average burden/respondent (in hrs.)	Total burden (in hrs.)
State and local health officials in 50 States	150	1	0.50	75

2. Fresh Kills Municipal Landfill, New York, New York: A Health Study of Acute Respiratory Outcomes—New—The purpose of this proposed study is to investigate and determine whether odor and air pollutants emanating from Fresh Kills Municipal Landfill are associated with respiratory morbidity among two populations of adults diagnosed with asthma. The study will involve two geographically determined cohorts, living on Staten Island. Data collection will begin with a baseline questionnaire. The study will continue with a six week follow-up period. Daily diaries will be utilized to collect self-reported information on variables such as respiratory-related health outcomes, peak flow measurements, odor perception, and time spent outdoors. Exposure measurements of ozone, PM10 and hydrogen sulfide will be collected concurrently. The statistical analysis will compare health outcome measures (i.e. symptoms, change in peak flow etc.) to measurements of odor perception and other exposure variables. Other than their time, there will be no cost to the respondents.

Respondents	No. of respondents	No. of respondents/response	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Introductory phone call	140	1	0.10	14
Baseline questionnaire	140	1	0.75	105
Self-reported daily diary	140	42	0.25	1470
Total				1589

Dated: December 11, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–32063 Filed 12–17–96; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 96N–0373]

Agency Information Collection Activities: Proposed Collection; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on proposed collections of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the maintenance of lists of U.S. processors that export certain animal-derived foods (i.e., shell eggs, dairy products, game meat, and game meat products) to the European Community (EC), temporary exemptions from certain food labeling requirements for the purpose of conducting authorized food labeling experiments, petitions for health claims, and petitions for nutrient content claims.

DATES: Submit written comments on the collections of information by February 18, 1997.

ADDRESSES: Submit written comments on the collections of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Sanders, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1473.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collections of information listed below.

With respect to each of the following collections of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

1. Request for Information From U.S. Processors that Export to the European Community (OMB Control Number 0910–0320—Reinstatement)

EC is a group of 15 European countries that have agreed to harmonize their commodity requirements to facilitate commerce among member States. EC legislation for intra-EC trade has been extended to trade with non-EC countries, including the United States. For certain food products, including those listed below, EC legislation requires assurances from the responsible authority of the country of origin that the processor of the food is in compliance with applicable regulatory requirements.

With the assistance of trade associations and State authorities, FDA intends to request information from processors that export certain animal-derived products (shell eggs, dairy products, game meat, and game meat products) to EC. FDA will use the information to maintain lists of processors that have demonstrated current compliance with U.S. requirements and will provide the lists to EC quarterly. Inclusion on the list is voluntary. EC member countries will refer to the lists at ports of entry to verify that products offered for importation to EC from the United States are from processors that meet U.S. regulatory requirements. Products processed by firms not on the processor list are subject to detention and possible refusal at the port. FDA intends to request the following information from each processor:

(1) Business name and address;

(2) Name and telephone number of person designated as business contact;

(3) Lists of products presently being shipped to EC and those intended to be shipped in the next 6 months;

(4) Name and address of manufacturing plants for each product;

(5) Names and affiliations of any Federal, State, or local governmental agencies that inspect the plant, government-assigned plant identifier, such as plant number, and last date of inspection; and

(6) Assurance that the firm or individual representing the firm and

submitting a certificate for signature to FDA is aware of and knows that they are subject to the provisions of Section 1001 of Title 18, United States Code. This law provides that it is a criminal offense to knowingly and willfully make a false statement or alter or counterfeit documents in a matter within the jurisdiction of a U.S. agency.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

Products	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Shell Eggs	50	1	50	0.25	12.50
Dairy	250	1	250	0.25	62.50
Game Meat and Game Meat Products	75	1	75	0.25	18.75
Total	375	1	375	0.25	93.75

There are no capital costs or operating and maintenance costs associated with this collection.

The burden estimate is based on the time needed to write and transmit information which is readily available to the respondents. The number of respondents is based on prior responses to a request for this information.

Third Party Disclosure

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

Respondent	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating and Maintenance Costs
Trade Association	14	1	14	8	112	$7,000
State	50	1	50	8	400	$2,500

There are no capital costs associated with this collection.

The burden estimated for the trade associations assumes the trade associations will disseminate FDA's information request through mass mailings to their membership or publish it in their trade magazine or newsletter. The burden estimated for State authorities assumes dissemination of information to the processors or dissemination of information about the processors to FDA.

2. Exemptions Petitions for the Conduct of Food Labeling Experiments—21 CFR 101.108 (OMB Control No. 0910–0151—Reinstatement)

Under the authority of section 403(q) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(q)), FDA issued requirements for the declaration of nutrition information on food labels and labeling, including § 101.9 (21 CFR 101.9). Section 101.9 prescribes the format, including graphics and style, as well as alternative approaches, that are to be used by food producers in presenting nutrition information on the labels and labeling of their food products. FDA provides authorization in § 101.108 (21 CFR 101.108), in the form of temporary exemptions, for food producers to experiment with graphics and other formats for presenting nutrition and other related food labeling information. The information required under § 101.108(b) is needed to monitor the labeling of experimental packs of food deviating from the requirements of nutrition labeling. The information obtained in these experiments can be used in support of petitions to amend the nutrition labeling regulations to provide for the variations. The respondents for this collection are businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.108	0	1	0	40	0

There are no capital costs or operating and maintenance costs associated with this collection.

The reporting burden for § 101.108 is insignificant because exemption petitions are seldom submitted for the conduct of food labeling experiments. Over the last 3 years, FDA has not received any exemption petitions. Since the regulation was originally adopted on April 8, 1983, FDA has received only a few requests for temporary exemptions for the purposes of conducting authorized food labeling experiments.

3. Petitions for Health Claims—21 CFR 101.70(f) (OMB Control No. 0910–0287—Reinstatement)

Section 403(r)(4) of the act provides for the submission of petitions to FDA requesting the issuance of a regulation authorizing a health claim on a substance-disease relationship. Section

101.70(f) (21 CFR 101.70(f)) sets forth the information a person is required to supply in such a petition. This information will be used by the agency in determining whether a petition meets the requirements for issuing a regulation authorizing a health claim, thereby ensuring that the public health is protected. The respondents for this collection are businesses, other for-profit organizations, or not-for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating and Maintenance Costs
101.70(f)	3	1	3	80	240	?	?

Where question marks (?) appear, FDA has no information on which to determine whether there are capital costs or operating and maintenance costs associated with this collection. FDA is asking for comments on the extent to which there are capital costs or operating and maintenance costs associated with this collection.

FDA has estimated the average costs and burdens above based on its experience with health claim petitions that have been submitted to the agency. In the more than 3 years since § 101.70(f) became effective, FDA has received less than 10 health claims petitions. The hour burden is based on FDA's estimate of the average amount of time required to prepare these petitions.

4. Petitions for Nutrient Content Claims—21 CFR 101.69(m), (n), and (o) (OMB Control No. 0910–0288—Reinstatement)

Section 403(r)(4) of the act provides for the submission of petitions to FDA requesting the issuance of regulations authorizing a nutrient content claim characterizing the amount of a nutrient in a food product. Section 101.69(m)(1), (n)(1), and (o)(1) (21 CFR 101.69(m)(1), (n)(1), and (o)(1)) sets forth data requirements specific for nutrient content claims petitions, synonym petitions, and brand-name petitions, respectively. This information is used by FDA in determining whether a petition meets the requirements of the regulations for the issuance of a regulation providing for a nutrient content claim. The respondents for this collection are businesses, other for-profit organizations, or not-for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating and Maintenance Costs
101.69(m)(1)	1	1	1	40	40	?	?
101.69(n)(1)	1	1	1	20	20	?	?
101.69(o)(1)	1	1	1	20	20	?	?
Totals					80	?	?

Where question marks (?) appear, FDA has no information on which to determine whether there are capital costs or operating and maintenance costs associated with this collection. FDA is asking for comments on the extent to which there are capital costs or operating and maintenance costs associated with this collection.

FDA has estimated the average costs and burdens above based on its experience with nutrient content claim petitions that have been submitted to the agency. In the more than 2 years since § 101.69(m), (n), and (o) became effective, FDA has received only one nutrient content claim petition under § 101.69(n). The hour burden is based on FDA's estimate of the average amount of time required to prepare that petition. The hour burden for § 101.69(m) and (o) is based on the assumption that one petition would be submitted under each provision and that the information requirements are more complex (§ 101.69(m)) or about the same (§ 101.69(o)) as for § 101.69(n)).

Dated: December 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32034 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0393]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on MEDWATCH medical product reporting program forms, FDA form 3500 and 3500A.

DATES: Submit written comments on the collection of information by February 18, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

MEDWATCH—FDA's Medical Products Reporting Program, Forms FDA 3500 and FDA 3500A—21 CFR 310.305, 314.80, 600.80, 803.30, 803.50, 803.53, 803.56 (OMB Control Number 0910–0291—Reinstatement)

Under sections 505, 507, 512, 513, 515, and 903 of the Federal Food, Drug, and Cosmetic Act (the act); (21 U.S.C. 355, 357, 360b, 360c, 360e, and 393) and section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to ensure the safety and effectiveness of drugs, biologics, and devices. Under section 502(a) of the act (21 U.S.C. 352(f)(2)), a drug or device is misbranded if its labeling is false or misleading. Under section 502(f)(1) of the act it is misbranded if it fails to bear adequate warnings, and under section 502(j), it is misbranded if it is dangerous to health when used as directed in its labeling. To carry out its responsibilities, the agency needs to be informed whenever an adverse event or product problem occurs. Only if FDA is provided with such information, will the agency be able to evaluate the risk, if any, associated with the product, and take whatever action is necessary to reduce or eliminate the public's exposure to the risk through regulatory action ranging from labeling changes to the rare product withdrawal. To ensure the marketing of safe and effective products, certain adverse events must be reported. Requirements regarding mandatory reporting of adverse events or product problems have been codified in 21 CFR 310.305, 314.80, 600.80, 803.30, 803.50, 803.53, and 803.56.

To implement these provisions for reporting of adverse events and product problems with all medications, devices, and biologics, as well as any other products that are regulated by FDA, two very similar forms are used. These forms replaced all other forms used by the agency, including Form FDA 1639. Form FDA 3500A is used for mandatory reporting. Form FDA 3500 is used for voluntary (i.e., not mandated by law or regulation) reporting of adverse events and product problems by health professionals.

Respondents to this collection of information are health professionals, hospitals, and other health care providers (i.e., nursing homes, etc.), manufacturers of biologics, drugs, and medical devices, user facilities, distributors, and importers.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
CBER:					
600.80					
Form 3500	993	1	993	0.5	496.5
Form 3500A	63	188.7	11,889	1.0	11,889
CDER:					
310.305 and 314.80					
Form 3500	19,922	1	19,922	0.5	9,961
Form 3500A	500	303.0	151,513	1.0	151,513
CDRH:					
803.30, 803.50, 803.53, and 803.56					
Form 3500	4,572	1	4,572	0.5	2,286
Form 3500A	39,889	2.8	110,933	1.0	110,933
CFSAN:					
Form 3500	410	1	410	0.5	205
Form 3500A	0	0	0	0	0
Total Hours					287,283.5

There are no capital costs or operating and maintenance costs associated with this collection.

(Note: Center for Biologics Evaluation and Research (CBER); Center for Drug Evaluation and Research (CDER); Center for Devices and Radiological Health (CDRH); and Center for Food Safety and Applied Nutrition (CFSAN).

As more medical products are approved by FDA and marketed, and as knowledge increases regarding the

importance of notifying FDA when adverse events and product problems are observed, it is expected that more reports will be submitted. The figures shown in the table are based on previously calculated estimates and actual 1995 reporting experiences. The number of reports recorded above were annualized based on actual 1995 experience and an anticipated 10-percent-per-year increase in reporting over the next 3 years. There are zeroes in the CFSAN row because mandatory reporting using Form FDA 3500A is not required.

Dated: December 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32070 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0380]

Determination of Regulatory Review Period for Purposes of Patent Extension; VISTIDE™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VISTIDE™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VISTIDE™ (cidofovir). VISTIDE™ is indicated for the treatment of CMV retinitis in patients with acquired immune deficiency syndrome (AIDS). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VISTIDE™ (U.S. Patent No. 5,142,051) from the Institute of Organic Chemistry & Biochemistry of the Academy of Science of the Czech Republic and Rega Institut, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 24, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VISTIDE™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VISTIDE™ is 1,533 days. Of this time, 1,266 days occurred during the testing phase of the regulatory review period, while 267 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: April 17, 1992. The applicant claims April 16, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND's effective date was April 17, 1992, which was 30 days after FDA received the IND on March 18, 1992.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: October 4, 1995. The applicant claims September 29, 1995, as the date the new drug application (NDA) for VISTIDE™ (NDA 20–638) was initially submitted. However, FDA records indicate that NDA 20–638 was submitted on October 4, 1995.

3. *The date the application was approved*: June 26, 1996. FDA has verified the applicant's claim that NDA 20–638 was approved on June 26, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, the applicant seeks 305 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 18, 1997 submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 17, 1997 for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 4, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–32033 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[OPL–013–N]

Medicare Program; Request for Nominations for Members for the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations from medical organizations representing physicians for individuals to serve on the Practicing Physicians Advisory Council. There will be three vacancies on February 28, 1997.

DATES: Nominations from medical organizations representing physicians will be considered if we receive them at the appropriate address, provided below, no later than January 17, 1997.

ADDRESSES: Mail or deliver nominations for membership to the following address: Health Care Financing Administration, Office of the Associate Administrator for External Affairs, Attention: Samuel S. Shekar, M.D., Executive Director, Practicing Physicians Advisory Council, Room 425 H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Samuel S. Shekar, M.D., Executive Director, Practicing Physicians Advisory Council, (202) 260–5463.

SUPPLEMENTARY INFORMATION: Section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), enacted on November 5, 1990, added a new section 1868 to the Social Security Act (the Act), which established the Practicing Physicians Advisory Council (the Council). The Council advises the Secretary of the Department of Health and Human Services (the Secretary) on proposed regulations and manual issuances related to physicians' services. An advisory committee created by the Congress, such as this one, is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Section 1868(a) of the Act requires that the Council consist of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. At least 11 Council members must be physicians as defined in section 1861(r)(1) of the Act; that is, State-licensed physicians of medicine or osteopathy. The other four Council members may include dentists, podiatrists, optometrists, and chiropractors. The Council must include both participating and nonparticipating physicians, as well as physicians practicing in rural and underserved urban areas. In addition, section 1868(a) of the Act provides that the Secretary's appointments for Council membership must be based on nominations made by medical organizations representing physicians.

This notice is an invitation to all organizations representing physicians to submit names of nominees for membership on the Council. Current members whose terms expire in 1997 will be considered for reappointment, if renominated. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts.

Section 1868(b) of the Act provides that the Council meet once each calendar quarter, as requested by the Secretary, to discuss proposed changes in regulations and manual issuances that relate to physicians services. Council members are expected to participate in all meetings.

Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services provides management and support services to the Council.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee); 5 U.S.C. App. 2; and 45 CFR part 11)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 9, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–32093 Filed 12–17–96; 8:45 am]

BILLING CODE 4120–01–P

[BPO–140–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Second Quarter 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other Federal Register notices, and statements of policy that were published during April, May, and June of 1996 that relate to the Medicare and Medicaid programs. It also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that may be potentially covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the Federal Register at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe. We are also providing the content of revisions to the Medicare Coverage Issues Manual published during the period of April 1 through June 30, 1996. On August 21, 1989, we published the content of the Manual (54 FR 34555) and indicated that we will publish quarterly any updates. Adding to this listing the complete text of the changes to the Medicare Coverage Issues Manual fulfills this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT:

Bridget Wilhite, (410) 786–5248 (For Medicare instruction information).

Pat Prete, (410) 786–3246 (For Medicaid instruction information).

Sharon Hippler, (410) 786–4633 (For Food and Drug Administration-approved investigational device exemption information).

Cathy Johnson, (410) 786–5241 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs

involves (1) providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public, and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted the Secretary under sections 1102, 1871, and relevant provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the Federal Register at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we list in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published during April through June 1996.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies many of those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the Federal Register (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the Federal Register. We also sometimes issue proposed or final national coverage decision changes in separate Federal Register notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as-needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. This notice contains, as Addendum IV, reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We have not reprinted the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

III. How To Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, coverage decisions, or Food and Drug Administration-approved investigational device exemptions published during the time frame to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into six addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the Federal Register that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989 constitute a complete manual as of the end of the quarter covered by this notice. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous Federal Register documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV sets forth the revisions to the Medicare Coverage Issues Manual that were published during the quarter covered by this notice. For the revisions, we give a brief synopsis of the revisions as they appear on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revisions by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised section, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

Addendum V lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the Federal Register during the quarter covered by this notice. For each item, we list the date published, the Federal Register citation, the parts of the Code of Federal Regulations (CFR) that have changed (if applicable), the agency file code number, the title of the regulation, the ending date of the comment period (if applicable), and the effective date (if applicable).

On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. That final rule states that we will announce in this quarterly notice all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. Addendum VI includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved during the quarter covered by this notice. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number). Future notices will announce investigational device exemption categorizations and the numbers

assigned by the Food and Drug Administration for the quarter for which the notices cover.

IV. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily Federal Register. Interested individuals may purchase individual copies or subscribe to the Federal Register by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The Federal Register is also available on 24x microfiche and as an online database through GPO Access. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local using localWAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

C. Rulings

We publish Rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the Federal Register.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future, and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

V. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual, Part 1—Fiscal Administration (HCFA–Pub. 13–1) transmittal entitled ''Electronic Funds Transfer,'' use the Superintendent of Documents No. HE 22.8/6–3 and the HCFA transmittal number 126.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Bureau of Program Operations, Issuances Staff, Health Care Financing Administration, S3–01–27, 7500 Security Blvd., Baltimore, MD 21244–1850, Telephone (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, C4–25–02, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–3246.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Bureau of Policy Development, Office of Chronic Care and Insurance Policy, Health Care Financing Administration, C4–11–04, 7500 Security Blvd., Baltimore, MD 21244–1850, Telephone (410) 786–4633.

Questions concerning all other information may be addressed to Cathy Johnson, Bureau of Policy Development, Office of Regulations, Health Care Financing Administration, C5–09–05, 7500 Security Blvd., Baltimore, MD 21244–1850, Telephone (410) 786–5241.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: December 3, 1996.

Gary Kavanagh,

Acting Director, Bureau of Program Operations.

Addendum I

This addendum lists the publication dates of the most recent quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual. In addition, for a complete listing of the prior quarterly updates to the Coverage Issues Manual please refer to the January 3, 1995 update (60 FR 132).

July 26, 1995 (60 FR 38344)
November 15, 1995 (60 FR 57435)
April 8, 1996 (61 FR 154)
June 26, 1996 (61 FR 33119)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[April through June 1996]

Trans. No.		Manual/Subject/Publication No.
		Intermediary Manual Part 1—Fiscal Administration (HCFA Pub. 13–1) (Superintendent of Documents No. HE 22.8/6–3)
126	•	Electronic Funds Transfer
		Intermediary Manual Part 2—Audits, Reimbursement Program Administration (HCFA Pub. 13–2) (Superintendent of Documents No. HE 22.8/6–2)
406	•	Maximum Payment For Rural Health Clinics Maximum Payment Per Visit for Freestanding Federally Qualified Health Centers
407	•	Assessment of Benefit Savings Attributable to Medical Review Activities Completion of the RBS
		Intermediary Manual Part 3—Claims Process (HCFA Pub. 13–3) (Superintendent of Documents No. HE 22.8/6–1)
1674	•	Alphabetic Listing of Data Elements Medical Review Attachment Data Definitions and Codes Requirements by Record Type and Field (Data Element) for Outpatient Rehabilitative Services Validating Information for Outpatient Rehabilitation Plan of Treatment Submissions
1675	•	HCPCS for Hospital Outpatient Radiology Services and Other Diagnostic Procedures
1676	•	Outpatient Observation Services
1677	•	Conditions To Be Met For Coverage of Home Health Services Reasonable and Necessary Services Impact of Other Available Care Givers and Other Available Coverage on Medicare Coverage of Home Health Services Conditions Patient Must Meet To Qualify For Coverage of Home Health Services Confined to the Home Services are Provided Under a Plan of Care Established and Approved by a Physician Under the Care of a Physician Needs Skilled Nursing Care on an Intermittent Basis or Physical Therapy or Speech-Language Pathology Services or Has Continued Need for Occupational Therapy Physician Certification Coverage of Services Which Establish Home Health Eligibility Skilled Nursing Care Skilled Therapy Services Skilled Nursing, Physical Therapy, Speech-Language Pathology Services, and Occupational Therapy Home Health Aide Services Medical Social Services Medical Supplies (Except for Drugs and Biologicals) and the Use of Durable Medical Equipment Services of Interns and Residents Part-time or Intermittent Home Health Aide and Skilled Nursing Services Non-eligibility Hospital Insurance Number of Home Health Visits Under Hospital Insurance (Part A) Number of Home Health Visits Under Supplementary Medical Insurance (Part B) Visit Defined Counting Visits Specific Exclusions from Coverage as Home Health Services Physician Certification for Medical and Other Health Services Furnished by Home Health Agency Osteoporosis Injections as HHA Benefit
1678	•	Physician Acknowledgment Processing No-Payment Bills PRO Reporting on Medical Review
1679	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
1680	•	Claims Processing Timeliness
1681	•	HCPCS for Hospital Outpatient Radiology Services and Other Diagnostic Procedures

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April through June 1996]

Trans. No.	Manual/Subject/Publication No.
1682	• Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
1683	• Stem Cell Transplantation Allogeneic Stem Cell Transplantation Autologous Stem Cell Transplantation Billing for Stem Cell Transplantation
	Carriers Manual Part 1—Fiscal Administration (HCFA Pub. 14–1) (Superintendent of Documents No. HE 22.8/7–2)
120	• Electronic Funds Transfer
	Carriers Manual Part 2—Program Administration (HCFA Pub. 14–2) (Superintendent of Documents No. HE 22.8/7–3)
133	• Functional Standards for Claims Processing Operations
	Carriers Manual Part 3—Claims Process (HCFA Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1539	• Local MR Policy The Carrier Advisory Committee Medical Review Prepayment Screens CMR Case Selection Carrier Coordination With Peer Review Organization Data Analysis to Identify Aberrancies Standard Postpayment Data Reports Prepayment MR and Audit Trail Categories of MR Screens HCFA Mandated and HCFA Optional MN Screens Determination
1540	• Reasonableness and Necessity
1541	• Chemotherapy Administration Codes
1542	• Beneficiary Address Change
1543	• Claims for Outpatient Services Furnished by a Physical or Occupational Therapist in Independent Practice
1544	• Payable Physical Therapy
1545	• Definition of a Global Surgical Package Billing Requirements for Global Surgeries Claims Review for Global Surgeries Adjudication of Claims for Global Surgeries Postpayment Issues Claims for Multiple Surgeries Claims for Bilateral Surgeries Claims for Co- and Team Surgeons Claims for Anesthesia Services Performed on and After January 1, 1992 Billing for Portable X-ray Set-up Services
1546	• Telephone Services Definition of Physician for Care Plan Oversight Services Otologic Evaluations Monthly Capitation Payment Method for Physician's Services Furnished to Patients on Maintenance Dialysis Daily Visit Charges for Inpatient Hospital Visits Correct Coding Policy
1547	• Chemotherapy Administration Codes Billing Procedures for Maxillofacial Services Claims for Transportation in Connection With Furnishing Diagnostic Tests Payment for Certain Physician Services Performed in Facility Settings
	Carriers Manual Part 4—Professional Relations (HCFA Pub. 14–4) (Superintendent of Documents No. HE 22.8/7–4)
12	• Non-Certified Provider/Supplier Enrollment Enrollment Instructions for New Medicare Providers/Suppliers Enrollment Procedures for All Applicants Provider/Supplier Specific Procedures • Procedures for Denials and Appeals • Request for Additional Information • Provider/Supplier Education • Data Collection/Maintenance Requirements • Tracking Requirements

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April through June 1996]

Trans. No.		Manual/Subject/Publication No.
		Program Memorandum Intermediaries (HCFA Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–96–1	•	Billing of CPT–4 Code 83721, Direct Measurement Lipoprotein; Low Density Lipoprotein Cholesterol
		Program Memorandum Intermediaries/Carriers (HCFA Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–96–3	•	New Modifier for Laboratory Services
AB–96–4	•	Requirement to Halt Payments for Non-Covered Items and Services or for Previous Erroneous Payments
AB–96–5	•	New Waived Test
AB–96–6	•	Establishment of the Medicare Fraud Information Specialist Position
		Program Memorandum Regional Offices Standard and Certification (HCFA Pub. 54) (Superintendent of Documents No. HE 22.28/5:90–1)
96–1	•	Civil Money Penalty Collections Procedures
		Hospital Manual (HCFA Pub. 10) Superintendent of Documents No. HE 22.8/2)
688	•	HCPCS for Hospital Outpatient Radiology and Other Diagnostic Procedures
689	•	Outpatient Observation Services
690	•	Physician Acknowledgment
691	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
692	•	Claims Processing Timeliness
693	•	HCPCS for Hospital Outpatient Radiology and Other Diagnostic Procedures
694	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
695	•	Stem Cell Transplantation Allogeneic Stem Cell Transplantation Autologous Stem Cell Transplantation Billing for Stem Cell Transplantation
		Christian Science Sanatorium Hospital Manual Supplement (HCFA Pub. 32) (Superintendent of Documents No. HE 22.8/2–2)
35	•	Claims Processing Timeliness
36	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Home Health Agency Manual (HCFA Pub. 11) (Superintendent of Documents No. HE 22.8/5)
277	•	Home Health Agency Rehabilitation Centers Reasonable and Necessary Services Impact of Other Available Care Givers and Other Available Coverage on Medicare Coverage of Home Health Services Conditions the Patient Must Meet to Qualify for Coverage of Home Health Services Confined to the Home Services are Provided Under a Plan of Care Established and Approved by a Physician Under the Care of a Physician Needs Skilled Nursing Care on an Intermittent Basis, or Physical Therapy or Speech-Language Pathology Services or Has Continued Need for Occupational Therapy Physician Certification Coverage of Services Which Establish Home Health Eligibility Skilled Nursing Care Skilled Therapy Services Skilled Nursing Care, Physical Therapy, Speech-Language Pathology Services, and Occupational Therapy Home Health Aide Services Medical Social Services Medical Supplies (Except for Drugs and Biologicals) and the Use of Durable Medical Equipment Services of Interns and Residents Outpatient Services Part-time or Intermittent Home Health Aide and Skilled Nursing Services Non-eligible Under Hospital Insurance Number of Home Health Visits Under Hospital Insurance (Part A)

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April through June 1996]

Trans. No.		Manual/Subject/Publication No.
		Number of Home Health Visits Under Supplementary Medical Insurance (Part B) Visit Defined Counting Visits Specific Exclusions From Coverage as Home Health Services Billing for Osteoporosis Injections
278	•	Claims Processing Timeliness
279	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Skilled Nursing Facility Manual (HCFA Pub. 12) (Superintendent of Documents No. HE 22.8/3)
343	•	Claims Processing Timeliness
344	•	Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Rural Health Clinic and Federally Qualified Health Centers Manual (HCFA Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
22	•	Rural Health Clinics Federally Qualified Health Centers
23	•	Claims Processing Timeliness
		Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA Pub. 29) (Superintendent of Documents No. HE 22.8/13)
72	•	Pneumococcal Pneumonia and Influenza Virus Vaccines
73	•	Claims Processing Timeliness
74	•	Covered Home Dialysis Equipment Non-covered Home Dialysis Equipment
		Hospice Manual (HCFA Pub. 21) (Superintendent of Documents No. HE 22.8/18)
48	•	Claims Processing Timeliness
49	•	Billing Hospice Claims for Pneumococcal Pneumonia and Influenza Virus Vaccines
		Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA Pub. 9) (Superintendent of Documents No. HE 22.8/9)
124	•	Claims Processing Timeliness
125	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccine
		Coverage Issues Manual (HCFA Pub. 6) Superintendent of Documents No. HE 22.8/14)
84	•	Blood Platelet Transfusions Stem Cell Transplantation
85	•	Osteogenic Stimulation
86	•	Infusion Pumps
87	•	Adult Liver Transplantation
		Provider Reimbursement Manual Part 1—(HCFA Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
393	•	Changing Bases for Allocating Cost Centers or Order in Which Cost Centers Are Allocated
394	•	Provider Charge Structure as Basis for Apportionment
		Provider Reimbursement Manual Part II—(HCFA Pub. 15–11–A) (Superintendent of Documents No. HE 22.8/4)
18	•	Cost Report Due Dates Filing of Cost Reports by Providers of Chain Organization or Other Group of Providers

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April through June 1996]

Trans. No.	Manual/Subject/Publication No.
	Provider Reimbursement Manual Part II—(HCFA Pub. 15–11–AB) (Superintendent of Documents No. HE 22.8/4)
8	• Cost Reporting Forms
9	• Electronic Reporting Specifications for Form-2552–92
	Provider Reimbursement Manual Part II—(HCFA Pub. 15–11–AF) (Superintendent of Documents No. HE 22.8/4)
2	• General Worksheet A—Reclassification and Adjustment of Trial Balance of Expenses Worksheet A–5—Adjustments to Expenses Worksheet B—Cost Allocation—General Service Costs and Worksheet B–1 Cost Allocation—Statistical Basis
	State Medicaid Manual—Part 2—State Organization and General Administration (HCFA Pub. 45–2) (Superintendent of Documents No. HE 22.8/10)
86	• Early and Periodic Screening, Diagnostic and Treatment Report (Form HCFA–416)
	State Medicaid Manual—Part 4—Services (HCFA Pub. 45–4) (Superintendent of Documents No. HE 22.8/10)
69	• Institutions for Mental Diseases
	State Medicaid Manual—Part 6—Payment for Services (HCFA Pub. 45–6) (Superintendent of Documents No. HE 22.8/10)
30	• A Listing of Multiple Source Drugs
	Medicare/Medicaid Sanction—Reinstatement Report (HCFA Pub. 69)
96–5	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—May 1996
96–6	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—June 1996

Addendum IV—Medicare Coverage Issues Manual April Through June 1996—

Transmittal No. 84; section 35–30, CHANGED PROCEDURES—EFFECTIVE DATE: For services performed on or after May 24, 1996.

Section 35–30, Blood Platelet Transfusions.—This section is reorganized to separate blood platelet transfusions from bone marrow transplants.

Section 35–30.1, Stem Cell Transplantation.—This section dedesignates and revises material previously contained in section 35–30.B and C. to clarify that the policy for bone marrow transplants, a type of stem cell transplantation, applies to all types of stem cell transplants. Multiple myeloma is added to the conditions for which stem cell transplantation is excluded from coverage.

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35–30 Blood Platelet Transfusions

Effective for services performed on or after August 1, 1978, blood platelet transplants are safe and effective for the correction of thrombocytopenia and other blood defects. It is covered under Medicare when treatment is reasonable and necessary for the individual patient.

35–30.1 Stem Cell Transplantation

Stem cell transplantation is a process in which stem cells are harvested from either a patient's or donor's bone marrow or peripheral blood for intravenous infusion. The transplant can be used to effect hematopoietic reconstitution following severely myelotoxic doses of chemotherapy (HDCT) and/or radiotherapy used to treat various malignancies. Allogeneic stem cell transplant may also be used to restore function in recipients having an inherited or acquired deficiency or defect.

A. *Allogeneic Stem Cell Transplantation.*—Allogeneic stem cell transplantation (ICD–9–CM codes 41.02 and 41.03) is a procedure in which a portion of a healthy donor's stem cell or bone marrow is obtained and prepared for intravenous infusion.

1. *Covered Conditions.*—The following uses of allogeneic bone marrow transplantation are covered under Medicare:

• Effective for services performed on or after August 1, 1978, for the treatment of leukemia, leukemia in remission (ICD–9–CM codes 204.00 through 208.91), or aplastic anemia (ICD–9–CM codes 284.0 through 284.9) when it is reasonable and necessary; and

• Effective for services performed on or after June 3, 1985, for the treatment of severe combined immunodeficiency disease (SCID) (ICD–9–CM code 279.2), and for the treatment of Wiskott-Aldrich syndrome (ICD–9–CM 279.12).

2. *Noncovered Conditions.*—Effective May 24, 1996, allogeneic stem cell

transplantation is not covered as treatment for multiple myeloma (ICD–9–CM codes 203.0 and 238.6).

B. *Autologous Stem Cell Transplantation (Effective for Services Performed on or After 04/28/89).*—Autologous stem cell transplantation (ICD–9–CM procedure code 41.01 or 41.04) is a technique for restoring stem cells using the patient's own previously stored cells.

1. *Covered Conditions.*—Autologous stem cell transplantation (ICD–9–CM code 41.01, CPT–4 code 38241) is considered reasonable and necessary under § 1862(a)(1)(A) of the Act for the following conditions and is covered under Medicare for patients with:

- Acute leukemia in remission (ICD–9–CM codes 204.01, lymphoid; 205.01, myeloid; 206.01, monocytic; 207.01, acute erythremia and erythroleukemia; and 208.01, unspecified cell type) who have a high probability of relapse and who have no human leucocyte antigens (HLA)-matched;
- Resistant non-Hodgkin's lymphomas (ICD–9–CM codes 200.00–200.08, 200.10–200.18, 200.20–200.28, 200.80–200.88, 202.00–202.08, 202.80–202.88, and 202.90–202.98) or those presenting with poor prognostic features following an initial response;
- Recurrent or refractory neuroblastoma (see ICD–9–CM Neoplasm by site, malignant); or
- Advanced Hodgkin's disease (ICD–9–CM codes 201.00–201.98) who have failed conventional therapy and have no HLA-matched donor.

2. *Noncovered Conditions.*—Insufficient data exist to establish definite conclusions regarding the efficacy of autologous stem cell transplantation for the following conditions:

- Acute leukemia not in remission (ICD–9–CM codes 204.00, 205.00, 206.00, 207.00 and 208.00);
- Chronic granulocytic leukemia (ICD–9–CM codes 205.10 and 205.11);
- Solid tumors (other than neuroblastoma) (ICD–9–CM codes 140.0–199.1); or
- Effective May 24, 1996, multiple myeloma (ICD–9–CM code 203.0 and 238.6).

In these cases, autologous stem cell transplantation is not considered reasonable and necessary within the meaning of § 1862(a)(1)(A) of the Act and is not covered under Medicare.

Transmittal No. 85; section 35–48, CHANGED IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: SERVICES PERFORMED ON OR AFTER 07/01/96.

SECTION 35–48, OSTEOGENIC STIMULATION, is revised to expand coverage of this procedure and provide additional clarification. The following changes have been made.

- Coverage of osteogenic stimulation, used noninvasively or invasively, is expanded to include its use as an adjunct to spinal fusion surgery for certain patients; and
- Clarification is provided when noninvasive osteogenic stimulation is indicated after failed fusion.

35–48 OSTEOGENIC STIMULATION (Effective for services performed on and after September 15, 1980.)

Electrical stimulation to augment bone repair can be attained either invasively or noninvasively. Invasive devices provide electrical stimulation directly at the fracture site either through percutaneously placed cathodes or by implantation of a coiled cathode wire into the fracture site. The power pack for the latter device is implanted into soft tissue near the fracture site and subcutaneously connected to the cathode, creating a self-contained system with no external components. The power supply for the former device is externally placed and the leads connected to the inserted cathodes. With the noninvasive device, opposing pads, wired to an external power supply, are placed over the cast. An electromagnetic field is created between the pads at the fracture site.

Noninvasive Stimulator.—The noninvasive stimulator device is covered only for the following indications:

- Nonunion of long bone fractures;
- Failed fusion, where a minimum of nine months has elapsed since the last surgery;
- Congenital pseudarthroses; and
- As an adjunct to spinal fusion surgery for patients at high risk of pseudarthrosis due to previously failed spinal fusion at the same site or for those undergoing multiple level fusion. A multiple level fusion involves 3 or more vertebrae (e.g., L3–L5, L4–S1, etc).

Invasive (Implantable) Stimulator.—The invasive stimulator device is covered only for the following indications:

- Nonunion of long bone fractures;
- As an adjunct to spinal fusion surgery for patients at high risk of pseudarthrosis due to previously failed spinal fusion at the same site or for those undergoing multiple level fusion. A multiple level fusion involves 3 or more vertebrae (e.g., L3–L5, L4–S1, etc).

Nonunion, for all types of devices, is considered to exist only after six or more months have elapsed without healing of the fracture.

Transmittal No. 86; section 60–14, NEW IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: Services Beginning on or after September 1, 1996.

Section 60–14, Infusion Pumps, is revised to exclude coverage of vancomycin used with an external infusion pump. There is insufficient evidence to support the necessity of using an external infusion pump, instead of a disposable elastomeric pump or the gravity drip method, to administer vancomycin in a safe and appropriate manner.

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60–14 INFUSION PUMPS

THE FOLLOWING INDICATIONS FOR TREATMENT USING INFUSION PUMPS ARE COVERED UNDER MEDICARE:

A. *External Infusion Pumps.*—

1. *Iron Poisoning (Effective for Services Performed On or After 9/26/84).*—When used in the administration of deferoxamine for the treatment of acute iron poisoning and iron overload, only external infusion pumps are covered.

2. *Thromboembolic Disease (Effective for Services Performed On or After 9/26/84).*—When used in the administration of heparin for the treatment of thromboembolic disease and/or pulmonary embolism, only external infusion pumps used in an institutional setting are covered.

3. *Chemotherapy for Liver Cancer (Effective for Services Performed On or After 1/29/85).*—The external chemotherapy infusion pump is covered when used in the treatment of primary hepatocellular carcinoma or colorectal cancer where this disease is unresectable or where the patient refuses surgical excision of the tumor.

4. *Morphine for Intractable Cancer Pain (Effective for Services Performed On or After 4/22/85).*—Morphine infusion via an external infusion pump is covered when used in the treatment of intractable pain caused by cancer (in either an inpatient or outpatient setting, including a hospice). Other uses of external infusion pumps *are covered* if the contractor's medical staff verifies the appropriateness of the therapy and of the prescribed pump for the individual patient.

Note: Payment may also be made for drugs necessary for the effective use of an external infusion pump as long as the drug being used with the pump is itself reasonable and necessary for the patient's treatment.

B. *Implantable Infusion Pumps.*—

1. *Chemotherapy for Liver Cancer (Effective for Services Performed On or After 9/26/84).*—The implantable infusion pump is covered for intra-arterial infusion of 5–FUdR for the treatment of liver cancer for patients with primary hepatocellular carcinoma or Duke's Class D colorectal cancer, in whom the metastases are limited to the liver, and where (1) the disease is unresectable or (2) where the patient refuses surgical excision of the tumor.

2. *Anti-Spasmodic Drugs for Severe Spasticity.*—An implantable infusion pump is covered when used to administer anti-spasmodic drugs intrathecally (e.g., baclofen) to treat chronic intractable spasticity in patients who have proven unresponsive to less invasive medical therapy as determined by the following criteria:

- As indicated by at least a 6-week trial, the patient cannot be maintained on noninvasive methods of spasm control, such as oral anti-spasmodic drugs, either because these methods fail to control adequately the spasticity or produce intolerable side effects, and
- Prior to pump implantation, the patient must have responded favorably to a trial intrathecal dose of the anti-spasmodic drug.

3. *Opioid Drugs for Treatment of Chronic Intractable Pain.*—An implantable infusion pump is covered when used to administer opioid drugs (e.g., morphine) intrathecally or epidurally for treatment of severe chronic intractable pain of malignant or nonmalignant origin in patients who have a life expectancy of at least 3 months and who have proven unresponsive to less invasive medical therapy as determined by the following criteria:

- The patient's history must indicate that he/she would not respond adequately to non-invasive methods of pain control, such as systemic opioids (including attempts to eliminate physical and behavioral abnormalities which may cause an exaggerated reaction to pain); and
- A preliminary trial of intraspinal opioid drug administration must be undertaken with a temporary intrathecal/epidural catheter to substantiate adequately acceptable pain relief and degree of side effects (including effects on the activities of daily living) and patient acceptance.

4. *Coverage of Other Uses of Implanted Infusion Pumps.*—Determinations may be made on coverage of other uses of implanted infusion pumps if the contractor's medical staff verifies that:

- The drug is reasonable and necessary for the treatment of the individual patient;
- It is medically necessary that the drug be administered by an implanted infusion pump; and
- The FDA approved labeling for the pump must specify that the drug being administered and the purpose for which it is administered is an indicated use for the pump.

5. *Implantation of Infusion Pump Is Contraindicated.*—The implantation of an infusion pump is contraindicated in the following patients:

- Patients with a known allergy or hypersensitivity to the drug being used (e.g., oral baclofen, morphine, etc.);
- Patients who have an infection;
- Patients whose body size is insufficient to support the weight and bulk of the device; and
- Patients with other implanted programmable devices since crosstalk between devices may inadvertently change the prescription.

Note: Payment may also be made for drugs necessary for the effective use of an implantable infusion pump as long as the drug being used with the pump is itself reasonable and necessary for the patient's treatment.

THE FOLLOWING INDICATIONS FOR TREATMENT USING INFUSION PUMPS ARE *NOT* COVERED UNDER MEDICARE:

A. *External Infusion Pumps.*—

1. *Diabetes (Effective for Services Performed On or After 1/29/85).*—The use of an external infusion pump for the subcutaneous infusion of insulin in the treatment of diabetes is not covered.

2. *Vancomycin (Effective for Services Beginning On or After September 1, 1996).*—Medicare coverage of vancomycin as a durable medical equipment infusion pump benefit is not covered. There is insufficient evidence to support the necessity of using an external infusion pump, instead of a disposable elastomeric pump or the gravity drip method, to administer vancomycin in a safe and appropriate manner.

B. *Implantable Infusion Pump.*—

1. *Thromboembolic Disease (Effective for Services Performed On or After 9/26/84).*—According to the Public Health Service, there is insufficient published clinical data to support the safety and effectiveness of the heparin implantable pump. Therefore, the use of an implantable infusion pump for infusion of heparin in the treatment of recurrent thromboembolic disease is not covered.

Transmittal No. 87; Section 35–53, CHANGED POLICY INSTRUCTIONS—EFFECTIVE DATE: For services performed on or after July 15, 1996.

Section 35–53, Adult Liver Transplantation, has been revised to expand Medicare coverage of liver transplantation to include all end stage liver disease diagnoses expect for hepatitis B or malignancies.

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These instructions should be implemented within your current operating budget.

35–53 ADULT LIVER TRANSPLANTATION

A. *General.*—Effective July 15, 1996, adult liver transplantation when performed on beneficiaries with end stage liver disease other than hepatitis B or malignancies is covered under Medicare when performed in a facility which is approved by HCFA as meeting institutional coverage criteria.

Coverage of adult liver transplantation is effective as of the date of the facility's approval, but for applications received before July 13, 1991, can be effective as early as March 8, 1990. (See Federal Register 56 FR 15006 dated April 12, 1991.)

B. *Follow-up Care.*—Follow-up care or retransplantation (ICD–9–CM 996.82, Complications of Transplanted Organ, Liver) required as a result of a covered liver transplant is covered, provided such services are otherwise reasonable and necessary. Follow-up care is also covered for patients who have been discharged from a hospital after receiving a noncovered liver transplant. Coverage for follow-up care is for items and services that are reasonable and necessary as determined by Medicare guidelines. (See Intermediary Manual § 3101.14 and Carriers Manual § 2300.1.)

C. *Immunosuppressive Drugs.*—See Intermediary Manual § 3660.8 and Carriers Manual §§ 2050.5, 4471, and 5249.

ADDENDUM V.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR Vol. 61 page	CFR Part	File code	Regulation title
04/03/96	14640–14658	405, 491	BPD–728–F	Medicare Program; Payment for Federally Qualified Health Center Services.
04/05/96	15266		OPL–009–N	Medicare Program; April 22, 1996, Meeting of the Practicing Physicians Advisory Council.
04/08/96	15491–15504		BPO–136–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions; Third Quarter 1995.
04/22/96	17677–17682	413	BPD–805–P	Medicare and Medicaid Programs; New Payment Methodology for Routine Extended Care Services Provided in A Swing-Bed Hospital.
05/02/96	19722–19760	405, 486	BPD–646–FC	Medicare and Medicaid Programs; Conditions of Coverage for Organ Procurement Organizations (OPOs).
05/03/96	19992–20067		BPD–846–PN	Medicare Program; Five-Year Review of Work Relative Value Units Under the Physician Fee Schedule.
05/09/96	21195–21198		MB–098–N	Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1996.
05/13/96	21969–21973	412	BPD–856–FC	Medicare and Medicaid Program; Criteria for a Rural Hospital To Be Designated as an Essential Access Community Hospital (EACH).
05/14/96	24318–24319		ORD–086–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February and March 1996
05/17/96	24941–24946		BPD–868–NC	Medicare and Medicaid Programs; Announcement of Applications From Hospitals Requesting Waivers for Organ Procurement Service Area.
05/31/96	27444–27708	412, 413, and 489	BPD–847–P	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates.
05/31/96	27282–27288	417	OMC–004–F	Health Maintenance Organizations: Employer Contribution to HMO
06/10/96	29449	412, 413, and 489	BPD–847–CN	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates; Correction.
06/10/96	29418		MB–098–CN	Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1996; Correction.
06/10/96	29418–29421		MB–098–N	Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1996.
06/10/96	29409–29410		ORD–087–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: April 1996
06/13/96	30072–30075		HSQ–231–N	Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Exemption of Laboratories in the State of Oregon.
06/24/96	32347–32351	405, 417, 431, 473, and 498.	BPD–704–FC	Medicare and Medicaid Programs; Provider Appeals: Technical Amendments.
06/26/96	33129		BPD–873–N	Medicare Program; Announcement of Collaborative Efforts With the National Institutes of Health to Study the Effectiveness of Lung Volume Reduction Surgery.
06/26/96	33119–33129		BPO–137–N	Medicare and Medicaid Program; Quarterly Listing of Program Issuances and Coverage Decisions-Fourth Quarter 1995.
06/27/96	33532		OPL–010–N	Medicare Program; July 22, 1996 Meeting of the Practicing Physicians Advisory Council.
06/27/96	33531–33532		ORD–088–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: May 1996.

Addendum VI—Categorization of Food and Drug Administration-Approved Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes:

Class I—Devices for which the general controls of the Food, Drug, and Cosmetic Act, such as adherence to good manufacturing practice regulations, are sufficient to provide a reasonable assurance of safety and effectiveness.

Class II—Devices that, in addition to general controls, require special controls, such as performance standards or postmarket surveillance, to provide a reasonable assurance of safety and effectiveness.

Class III—Devices that cannot be classified into Class I or Class II because insufficient information exists to determine that either special or general controls would provide reasonable assurance of safety and effectiveness.

Class III devices require premarket approval.

Under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories: Experimental/Investigational (Category A) Devices, or Non-Experimental/Investigational (Category B) Devices. Under this categorization process, an experimental/investigational (Category A) device is an innovative device in Class III for which ''absolute risk'' of the device type has not been established (that is, initial questions of safety and effectiveness have not been resolved and the Food and Drug Administration is unsure whether the device type can be safe and effective). A non-experimental/investigational (Category B) device is a device believed to be in Class I or Class II, or a device believed to be in Class III for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of that device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained Food and Drug Administration approval for that device type. The criteria the Food and Drug Administration uses to categorize an investigational device under Category B include the following:

(1) Devices, regardless of the classification, under investigation to establish substantial equivalence to a predicate device, that is, to establish substantial equivalence to a previously/currently legally marketed device.

(2) Class III devices whose technological characteristics and indication for use are comparable to a Pre-Market Approval (PMA)-approved device.

(3) Class III devices with technological advances compared to a PMA-approved device, that is, a device with technological changes that represent advances to a device that has already received PMA-approval (generational changes).

(4) Class III devices that are comparable to a PMA-approved device but are under investigation for a new indication for use. For purposes of studying the new indication, no significant modifications to the device were required.

(5) Pre-amendments Class III devices that become the subject of an investigational device exemption after the Food and Drug Administration requires premarket approval, that is, no PMA application was submitted or the PMA application was denied.

(6) Nonsignificant risk device investigations for which the Food and Drug Administration required the submission of an investigational device exemption. The following information presents the device number, category (in this case, A), and criterion code.

G950158 A1
G950168 A2
G950175 A2
G960060 A1
G960066 A2
G960074 A2
G960078 A1
G960101 A2
G960113 A2

The following information presents the device number, category (in this case, B), and criterion code.

G950194 B1
G950210 B1
G950218 B1
G960003 B4
G960021 B2
G960040 B4
G960041 B4
G960043 B1
G960046 B1
G960048 B3
G960052 B2
G960054 B3
G950056 B5
G960057 B2
G960059 B2
G960062 B2
G950100 B1
G950224 B3
G960047 B3
G960064 B2
G960067 B4
G960068 B4
G960069 B4
G960071 B2
G960076 B4
G960083 B3
G960084 B4
G960085 B1
G960086 B1
G960087 B3
G960088 B4
G960090 B1
G960091 B1
G960094 B1
G960095 B1
G960097 B1
G950205 B3
G960044 B3
G960045 B4
G960099 B1
G960100 B1
G960102 B1
G960103 B1
G950104 B1
G960105 B1
G960108 B3
G960109 B3
G960111 B2
G960112 B4
G960134 B4

Note: Some investigational devices may exhibit unique characteristics or raise safety concerns that make additional consideration necessary. For these devices, HCFA and the Food and Drug Administration will agree on the additional criteria to be used. The Food and Drug Administration will use these criteria to assign the device(s) to a category. As experience is gained in the categorization process, this addendum may be modified.

[FR Doc. 96–32016 Filed 12–17–96; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

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 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden.

Proposed Project

1. *AIDS Education and Training Centers Program: National Program and Service Record Data Reporting Form (OMB No. 0915–0154)*—Extension, No change—Under section 2692(a) of the Public Health Service Act, information on training programs and training participants is obtained from 15 AIDS Education Training Centers (ETCs) currently operating in health professions schools and academic health science centers. The goal of the AIDS ETC program is to increase the number of health care providers who are effectively educated and motivated to counsel, diagnose, treat and manage individuals with HIV infection and to assist in the prevention of high risk

behaviors which may lead to infection. The National Program and Service Record Data Reporting (NPSR) Form will be used by ETCs to provide standardized reporting of project activities for Federal program monitoring. The burden estimates are as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
NPSR	15	2	84	2,520

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 12, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–32073 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–15–P

Program Announcement for Grant Programs Administered by the Division of Disadvantaged Assistance, Bureau of Health Professions for Fiscal Year 1997

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for two grant programs for fiscal year (FY) 1997 under the authority of title VII of the Public Health Service (PHS) Act (herein referred to as the Act). These programs include:

Grants for Health Careers Opportunity Program (HCOP) (section 740, PHS Act, 42 CFR, part 57, subpart S)

Grants for the Minority Faculty Fellowship Program (MFFP) (section 738(b), PHS Act)

For the Health Careers Opportunity Program, it is anticipated that $7 million will be available to support approximately 38 competitive (new and renewal) projects. The average cost for each competitive award is estimated to be $184,210.

For the Minority Faculty Fellowship Program, it is estimated that $200,000 will be available to support approximately 6 fellowship awards. The average cost for each fellow is estimated to be $35,000.

Health Careers Opportunity Program (HCOP) (Catalog of Federal Domestic Assistance No. 93.822)

Eligibility and Purpose: Section 740 authorizes the Secretary to make grants to and enter into contracts with schools of allopathic medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine, and public and non-profit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from such schools.

Grant funds may be used to:

(1) Identify, recruit, and select individuals from disadvantaged backgrounds for education and training in a health profession;

(2) Provide, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education designed to assist them to complete successfully, such regular course of education at such a school or referring such individuals to institutions providing such preliminary education;

(3) Facilitate the entry of such individuals in health and allied health professions schools;

(4) Provide counseling or other services designed to assist such individuals to successfully complete their education at such a school; and

(5) Inform such individuals of sources of financial aid available to assist them in their health professions education.

Applicants must carry out at least 2 of the five purposes, even if grant funds are requested or awarded for only one of them. It is permissible to request grant support for only one of the purposes if other purposes are financed with non-Federal funds. The project period of Federal support will not exceed 3 years.

Comprehensive HCOP Programs

HHS encourages the consolidation into one proposal HCOP grants among existing HCOP projects in the same institution or among entities in a geographic area of the applicant institution. Grant funds may also support comprehensive HCOP programs-involving formal linkages among several community-based entities and educational institutions in a defined geographic area to achieve an educational continuum. Comprehensive HCOP programs may include: A designated geographic area with recognized minority/disadvantaged demographics; a program building on existing strengths; and formal linkages among educational institutions, community health care entities, and community organizations.

Eligible Student Participants

Individuals participating in HCOP programs must:

(1) Be from disadvantaged backgrounds;

(2) Have completed the junior year of high school (or its equivalent);

(3) Be a resident of the United States and either a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands, or a citizen of the Republic of Palau, or a citizen of the Republic of the Marshall Islands, or a citizen of the Federated States of Micronesia; and

(4) Must be enrolled and in good standing at the grantee institution or participating school(s).

Review Criteria: The review of applications will take into consideration the following factors:

(1) The degree to which the proposed project adequately provides for the requirements in 42 CFR, § 57.1805;

(2) The number and types of individuals who can be expected to benefit from the project;

(3) The administrative and management ability of the applicant to carry out the proposed project in a cost effective manner, including the validity of the proposed methodology, attainability of objectives, their measurability and outcomes;

(4) The adequacy of the staff and faculty, including experience and academic background relevant to the training of disadvantaged background students;

(5) The appropriateness of budget for assuring effective use of Federal funds; and

(6) The potential of the project to continue without further support under this program.

Statutory Funding Priorities: Section 740 provides that the Secretary shall give funding priority to the following schools:

1. Schools which previously received HCOP grants and increased their first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 (for which the applicant must supply data) by the end of 3 years from the date of the award of the HCOP grant; and

2. Schools which had not previously received an HCOP grant that increased their first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 (for which the applicant must supply data) over any period of time (3 consecutive years).

Administrative Funding Priorities: The following funding priorities were established in fiscal year 1990 after public comment at 55 FR 11264, dated March 27, 1990, and is being continued in FY 1997, with the exception that wording related to alternative means of documenting enrollment in terms of increases and retention rates for disadvantaged students has been deleted. Progress in these areas is considered as a part of the merit review process for this program and applicants will be informed of relevant benchmarks in application materials.

Funding priorities will be given to HCOP applications from:

(1) Health professions schools that have a disadvantaged student enrollment of 20 percent or more; and (2) to schools of allied health offering baccalaureate or higher level programs in physical therapy, physician assistant, respiratory therapy, medical technology or occupational therapy that have a disadvantaged student enrollment of 20 percent or more among those programs.

Statutory Allocation of Funds: Section 740 provides that the Secretary shall obligate amounts in accordance to the following:

(A) 70 percent shall be obligated for grants or contracts to institutions of higher education.

(B) 10 percent shall be obligated for community-based programs.

(C) Not more than 5 percent may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers.

Minority Faculty Fellowship Program (MFFP) (Catalog of Federal Domestic Assistance No. 93.923)

Purpose: The purpose of the MFFP is to increase the number of underrepresented minority faculty members in health professions schools, by providing fellowships to individuals who have the potential for teaching, administering programs, or conducting research as faculty members. To be eligible for a grant, an institution must demonstrate that it has or will have the commitment and ability to: (1) identify, recruit, and select underrepresented minorities in the health professions; (2) provide fellows with the techniques and skills needed to secure a tenured faculty position at the applicant school, including competence in: pedagogical skills, research methodology, development of research grant proposals, writing and publication skills, working with minority populations; (3) assist fellows in their preparation for an academic career, including the provision of mentors; and (4) provide health services to medically underserved communities. Fellows must work under the direct supervision of a senior level faculty member engaged in the disciplines mentioned above. The institution must offer the fellow a teaching position at the institution upon successful completion of the program.

The period of Federal support will not exceed one year for each fellowship award to an applicant institution, but a fellowship award to an individual recipient must be for a minimum of two years. HRSA *does not* contribute to the support of the fellow in the second year. The applicant institution (school) will be required to support the fellow for the second year at a level not less than the total of Federal and institutional funds awarded for the first year.

The fellowship award includes a stipend in an amount not exceeding 50 percent of the regular salary of a similar faculty member, or $30,000, whichever is less. Grant awards are to support fellow costs *only* and are limited to stipend, tuition and fees, and travel. Stipends must be paid by the grantee institution in accordance with its usual institutional payment policy, schedule and procedures. Stipend funds may be supplemented through other resources. Direct financial assistance to fellows may not be received concurrently with any other Federal education award (fellowship, traineeship, etc.), except for educational assistance under the Veterans Readjustment Benefits Act (''GI Bill''). Loans from Federal funds are not considered Federal awards. Any fellow who continues to receive full institutional salary is not eligible for stipend support from these grant funds.

Eligible Applicants: Eligible applicants are schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, clinical psychology, and other public or private nonprofit health or educational entities.

The Applicant Institution Shall Agree to the Following Assurances:

* Provide an assurance that the applicant institution will make available (directly through cash donations) $1 for every $1 of Federal funds received under the fellowship.

* Provide an assurance that institutional support will be provided for the individual for a second year at a level not less than the total amount of Federal and institutional funds provided in the year in which the grant was awarded;

* Provide an assurance that the fellowship recipient is from a minority group underrepresented in the health professions; has at a minimum, appropriate advanced preparation (such as a master's or doctoral degree in a health profession) and special skills necessary to enable that individual to teach and practice;

* Provide an assurance that the recipient of the fellowship will be a member of the faculty of the applicant institution; and

* Provide an assurance that the recipient of the fellowship has not been a member of the faculty of any school at any time during the 18-month period preceding the date on which the individual submits a request for the fellowship.

Fellowship recipients must also:

* Have completely satisfied any other obligation for health professional service which is owed under an agreement with the Federal Government, State Government, or other entity prior to beginning the period of service under this program; and

* Be a resident of the United States and either a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands, or a citizen of the Republic of Palau, or a citizen of the Marshall Islands, or a citizen of the Federated States of Micronesia.

Breach of Fellowship Funds: The school will be required to return fellowship funds received if it does not honor the terms of the fellowship award. Such sums must be paid within 1 year from the day the Secretary determines that the breach occurred. If payment is not received by the payment date, additional interest, penalties and administrative charges will be assessed in accordance with Federal Law (45 CFR 30.13).

Review Criteria: The review of applications will take into consideration the following review criteria:

1. The extent to which the institution demonstrates that it has the commitment and ability to identify,

recruit, and select underrepresented minority faculty, and its ability to provide health services to rural or medically underserved populations;

2. The extent to which the institution's training program will provide the fellow with the preparation, training and skills needed to secure an academic career. Training may include: Pedagogical skills, program administration, grant writing and publication skills, research methodology and development of research grant proposals, and community service abilities;

3. The degree to which the institution's senior faculty are involved in the training and preparation of fellows pursuing an academic career, and the potential of the institution to continue the program without Federal support beyond the approved project period; and

4. The extent to which the institution meets the eligibility requirements set forth in section 738(b) of the Public Health Service Act.

Definitions

The following definitions were established after public comment of 56 FR 22440, dated May 15, 1991.

''Minority'' means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, or Hispanic.

''Underrepresented Minority'' means, with respect to a health profession, racial and ethnic populations that are underrepresented in the health profession relative to the number of individuals who are members of the population involved. This definition encompasses Blacks, Hispanics, Native Americans, and, potentially, various subpopulations of Asian individuals.

Applicants must evidence that any particular subgroup of Asian individuals is underrepresented in a specific discipline.

The following definitions were established in OMB Directive No. 15.

''American Indian or Alaskan Native'' means a person having origins in any of the original people of North America, and who maintain cultural identification through tribal affiliation or community recognition. This definition applies to the Health Careers Opportunity Program.

''Asian or Pacific Islander'' means a person having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

''Black'' means a person having origins in any of the black racial groups of Africa.

''Hispanic'' means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

Following are additional definitions as defined in section 799.

''Accredited'' when applied to a school of medicine, optometry, podiatry, pharmacy, public health or chiropractic, or a graduate program in health administration, clinical psychology, clinical social work, or marriage and family therapy, means a school or program that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, except that a new school or program that, by reason of an insufficient period of operation, is not, at the time of application for a grant or contract under this title, eligible for accreditation by such a recognized body or bodies, shall be deemed accredited for purposes of this title, if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school or program will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of the first entering class in such school or program.

''Graduate program in health administration'' and ''graduate program in clinical psychology'' means an accredited graduate program in a public or nonprofit private institution in a State that provides training leading, respectively, to a graduate degree in health administration or an equivalent degree and a doctoral degree in clinical psychology or an equivalent degree.

''Schools of allied health'' means a public or nonprofit private college, junior college, or university or hospital-based educational entity that:

(1) Provides, or can provide, programs of education to enable individuals to become allied health professionals or to provide additional training for allied health professionals;

(2) Provides training for not less than a total of 20 persons in the allied health curricula (except that this subparagraph shall not apply to any hospital-based educational entity);

(3) Includes or is affiliated with a teaching hospital; and

(4) Is accredited by a recognized body or bodies approved for such purposes by the Secretary of Education or which provides to the Secretary satisfactory assurance by such accrediting body or bodies that reasonable progress is being made toward accreditation.

''Schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, and chiropractic'' means an accredited public or nonprofit private school in a State that provides training leading, respectively, to degrees of doctor of medicine, dentistry, osteopathy, a degree of bachelor of science in pharmacy, degrees of doctor of pharmacy, doctor of optometry, doctor of podiatric medicine, doctor of veterinary medicine, a graduate degree in public health, a degree of doctor of chiropractic medicine, or appropriate equivalent degrees for the above training, and including advanced training related to such degrees provided by any such school.

''State'' includes the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, Virgin Islands, Guam and American Samoa.

Other Definitions

''Community-based Program'' means a program with organizational headquarters located in and which primarily serves: a Metropolitan Statistical Area, as designated by the Office of Management and Budget; a Bureau of Economic Analysis, U.S. Department of Commerce designated non-metropolitan economic area or a county; or Indian tribe(s) as defined in 42 CFR 36.102(c), i.e., an Indian tribe, band, nation, rancheria, Pueblo, colony or community, including an Alaskan Native Village or regional or village corporation.

''Funding Priority'' means a favorable adjustment of aggregate review scores of individual approved applications when they meet specific criteria.

For the Health Careers Opportunity Program, ''health professions schools'' mean schools of allopathic medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, chiropractic, or graduate programs in clinical psychology and health administration.

As defined in 42 CFR 57.1804(c) (1) and (2), an ''individual from a disadvantaged background'' means an individual who:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions

school or from a program providing education or training in an allied health profession or;

(2) Comes from a family with an annual income below a level based on low-income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs. The following income figures determine what constitutes a low-income family for purposes of these Health Careers Opportunity Program grants for fiscal year 1997:

Size of parents' family [1]	Income level [2]
1	$10,200
2	13,200
3	15,700
4	20,200
5	23,800
6+	26,700

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1995, rounded to nearest $100.

''Metropolitan Statistical Area'' means a city of 50,000 or more population; or a Census Bureau defined urbanized area of at least 50,000 population, provided that the component county/counties have a total population of at least 100,000 (75,000 in New England).

For the Minority Faculty Fellowship Program, ''minority'' means an individual from a racial or ethnic group that is under-represented in the health professions, as defined in section 738.

''Stipend'' means a level of support for pre-doctoral students for participation in programs that meet specific HCOP requirements. The stipend level is $40 a day based on the actual number of days a participant attends classes. The time period covered is the first day of classes to the end of final examination week for each quarter or semester. Stipends may also be given for a minimum of 6 weeks or a maximum of 8 weeks in a summer program. A stipend may *not* be provided between the end of the academic year and the beginning of a summer program.

''Structured Program'' means a formal educational program of a specified length with a specially designed curriculum or set of activities in which designated trainees are required to participate (e.g., summer and/or academic year enrichment program which focus on such areas as mathematics, science, learning/communication skills, professional school entrance exams, and the like).

Other Information

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Academic and Community Partnerships

As part of its cross-cutting program priorities, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service health professions education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Application Availability

Application materials are available on the World Wide Web at address: ''http://www.hrsa.dhhs.gov/bhpr/grants.html''. In Fiscal Year 1997, the Bureau of Health Professions (BHPr) will use Adobe Acrobat to publish the grants documents on the Web page. In order to download, view and print these grants documents, you will need a copy of Adobe Acrobat Reader. This can be obtained without charge from the Internet by going to the Adobe Web page (''http://www.adobe.com'') and downloading the version of the Adobe Acrobat Reader which is appropriate for your operating system, i.e., Windows, Unix, Macintosh, etc. A set of more detailed instructions on how to download and use the Adobe Acrobat Reader can be found on the BHPr Grants Web page under ''Notes on this WWW Page.''

If additional programmatic information is needed, please contact the Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857. Questions regarding grants policy and business management issues should be directed to the Grants Management Branch in Room 8C–26 at the above address. Please refer to Table 1 for specific BHPr contact names and phone numbers.

For applicants who are unable to access application materials electronically, a hard copy will be provided by contacting the HRSA Grants Application Center. The Center may be contacted by: Telephone Number: 1–888–300–HRSA, FAX Number: 301–309–0579, E-mail Address: HRSA.GAC@IX.NETCOM.COM

Completed applications should be returned to: Grants Management Officer (CFDA#), HRSA Grants Application Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850.

TABLE 1

PHS Section number title CFDA number regulation	Grants management contact e-mail: wjohnson @hrsa.dhhs.gov FAX: (301) 443–6343	Programmatic contact e-mail: bbrooks @hrsa.dhhs.gov FAX: (301) 443–5242	Deadline date
740 Health Careers Opportunity Program 93.822 42 CFR part 57 subpart S.	Wilma Johnson (301) 443–6880	Mario A. Manecci, MPH, (301) 443–4493	2/7/97
738(b) Minority Faculty Fellowship Program 93.923.	Wilma Johnson (301) 443–6880	Lucille Revels (301) 443–4493	2/7/97

Application Forms

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for these grant programs have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

Deadline Dates

The deadline dates for receipt of applications for each of these grant programs are shown in Table 1. Applications will be considered to be ''on time'' if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant. In addition, applications which exceed the page limitation and/or do not follow format instructions will not be accepted for processing and will be returned to the applicant.

Paperwork Reduction Act

The standard application form PHS 6025–1 (Revised 9/96), HRSA Competing Training Grant Application, and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

These programs are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). These programs are also not subject to the Public Health System Reporting Requirements.

Dated: December 12, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–32074 Filed 12–17–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review two contract proposals.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: December 19, 1996 (Telephone conference).

Time: 11:00 a.m.

Place of Meeting: Willco Building, 6000 Executive Blvd. Bethesda, MD 20892–7003.

Contact Person: Sean O'Rourke, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–2861.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: December 11, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32087 Filed 12–17–96; 8:45 am]

BILLING CODE 4140–01–W

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4174–N–03]

Notice of Extension of Application Deadline for the Notice of Funding Availability for: the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program, Development Grants—Fiscal Year 1997; and the Section 108 Loan Guarantee Program for Small Communities in New York State

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for CDBG small Cities Development Grants for fiscal year (FY) 1997; Notice of extension of application deadline.

SUMMARY: On December 3, 1996 (61 FR 64196), HUD published a Notice of Funding Availability (NOFA) that announced the availability of CDBG Small Cities development grants and guaranteed loans to fund eligible development activities related to the New York canal system. The December 3, 1996 NOFA is part of the Canal Corridor Initiative, a multiyear effort designed to revitalize the economic base of communities in upstate New York through development projects and job creation along the canal system and connecting waterways.

The purpose of this notice is to extend the application deadline in the December 3, 1996 NOFA to March 4, 1997.

DATES: Applications are due on or prior to March 4, 1997. Applications, if mailed, must be postmarked by the United States Postal Service no later than midnight on March 4, 1997. Overnight delivery items received within ten (10) days after March 4, 1997 will be deemed to have been received by that date, upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than March 3, 1997. If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4:00 p.m. on the deadline date, March 4, 1997.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* and application that is not received by 4:00 p.m. on, or postmarked by, March 4, 1997. Applicants should take this policy into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: Completed applications will be accepted at the following addresses:

1. *For the nonentitled CDBG jurisdictions in and county of Ulster and nonparticipating jurisdictions in the urban county of Dutchess:* Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278–0068. Telephone (212) 264–0771; and

2. *For the nonentitled CDBG jurisdictions in and counties of Albany, Cayuga, Clinton, Columbia, Erie, Essex, Greene, Herkimer, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schuyler, Seneca, Tompkins, Warren, Washington, Wayne and Yates:* Department of Housing and Urban

Development, Community Planning and Development Division, Attention: Small Cities Coordinator, 465 Main Street, Lafayette Court, Buffalo, NY 14203–1780. Telephone (716) 551–5742.

FOR FURTHER INFORMATION CONTACT: Robert Duncan, Deputy Director, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW, Washington, DC 20410, Telephone (202) 708–3587; or Mr. Joseph D'Agosta, New York Regional Director, Office of Community Planning and Development, Department of Housing and Urban Development, 26 Federal Plaza, New York, NY 10278–0068, Telephone (212) 264–0771.

Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On December 3, 1996 (61 FR 64196), HUD published a Notice of Funding Availability (NOFA) that announced the availability of CDBG Small Cities development grants and guaranteed loans to fund eligible development activities related to the New York canal system. The December 3, 1996 NOFA is part of the Canal Corridor Initiative, a multiyear effort designed to revitalize the economic base of communities in upstate New York through development projects and job creation along the canal system and connecting waterways.

Eligible development activities are expected to be funded through a combination of resources, included Community Development Block Grant (CDBG) funds made available through this NOFA under the HUD-administered Small Cities CDBG program and the Section 108 Loan Guarantee program. HUD expects to provide funds for the selected development projects through a combination of CDBG and Section 108 in an aggregate amount of approximately $120 million or more depending upon the proposals submitted.

The purpose of this notice is to extend the application deadline in the December 3, 1996 NOFA. The December 3, 1996 NOFA provided for an application deadline of January 2, 1997. HUD has decided to extend the application deadline to March 4, 1997. No other changes to the December 3, 1996 NOFA are made by this notice.

Dated: December 11, 1996.

Howard Glaser,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 96–31896 Filed 12–17–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(NV–930–1430–01; N–47851)

Notice of Realty Action: Sale of Public Land in Lander County, Nevada, by Noncompetitive Sale Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of public lands in Lander County, Nevada.

SUMMARY: The following described land in Lander County, Nevada, has been examined and identified as suitable for disposal by direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than appraised fair market value:

Mount Diablo Meridian, Nevada

T. 31 N., R. 43 E.,
Sec. 26, lot 10;
Sec. 27, lots 31–33, 35, 36, 48–52.
Comprising 36.18 acres, more or less.

The above-described lands are hereby classified for disposal in accordance with Executive Order 6910 and the Act of June 28, 1934, as amended.

The land is being offered as a direct sale to the adjacent landowner, Battle Mountain Gold Corporation. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Judy A. Fry, Realty Specialist, Bureau of Land Management, Battle Mountain Field Office, 50 Bastian Road, P.O. Box 1420, Battle Mountain, NV, 89820, (702) 635–4000.

SUPPLEMENTARY INFORMATION: The land has been identified as suitable for disposal by the Shoshone-Eureka Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency.

The land to be sold is difficult and uneconomical for the Bureau to manage. It consists of three parcels, two of which are totally surrounded by patented mining claims owned by the sale proponent. The third parcel is bordered on three sides by the proponent's patented claims, and on the fourth by unpatented mining claims held by the proponent.

The locatable, salable, and leasable mineral estates, with the exception of geothermal resources, have been determined to have no known value. Therefore, the mineral estate, excluding geothermal resources, will be conveyed simultaneously with the surface estate in accordance with Section 209(b)(1) of Federal Land Policy and Management Act of 1976. Acceptance of the sale offer will constitute application for conveyance of the available mineral interests. The sale proponent will be required to submit a $50.00 nonrefundable filing fee for conveyance of the mineral interests specified above with the purchase price for the land. Failure to submit the nonrefundable fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

Upon publication of this Notice of Realty Action in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the Federal Register of a termination of segregation, or 270 days from date of this publication, which ever occurs first.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945);

2. Geothermal resources;

And will be subject to all other valid existing rights.

For a period of 45 days from the date of publication in the Federal Register, interested parties may submit comments to the District Manager, Battle Mountain District, 50 Bastian Way, Box 1420, Battle Mountain, NV 89820. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: December 5, 1996.

Gerald M. Smith,

District Manager.

[FR Doc. 96–32039 Filed 12–17–96; 8:45 am]

BILLING CODE 4310–HC–P

[NM–060–07–1430–01] [0001]

Notice of Realty Action—New Mexico 96645

AGENCY: Bureau of Land Management, Interior.

ACTION: Noncompetitive sale of public lands in Eddy County.

SUMMARY: The following land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 17 S., R. 30 E., NMPM
Sec. 19: Lot 3, containing approximately 2 acres.

The land is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from date of this notice, whichever occurs first.

The land is being offered by direct sale to Larry J. Taylor and Wanda Lorene Susie Taylor, his wife, who reside on the land.

The patent, when issued, will contain certain reservations to the United States and will be subject to existing rights-of-way. Detailed information concerning these reservations, as well as specific conditions of the sale, are available for review at the Carlsbad Resource Area Office, Bureau of Land Management, 620 East Greene, Carlsbad, New Mexico 88220.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at 2909 West Second Street, Roswell, New Mexico 88201. Any adverse comments will be evaluated by this District Manager, who may vacate or modify this realty action and issue a final determination. In absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 4, 1996.

Edwin L. Roberson,

Acting District Manager.

[FR Doc. 96–32036 Filed 12–17–96; 8:45 am]

BILLING CODE 4310–VA–M

[ES–960–1420–00; ES–48433, Group 16, Illinois]

Notice of Filing of Plat of Survey; Illinois

The plat of the corrective dependent resurvey of a portion of the west boundary; a portion of the subdivisional lines; the corrective survey of the subdivision of sections 18 and 19, and the Carlyle Reservoir acquisition boundary in sections 18 and 19, Township 4 North, Range 1 West, Third Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on January 21, 1997.

The survey was requested by the U.S. Army Corps of Engineers.

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., January 21, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: December 10, 1996.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 96–32038 Filed 12–17–96; 8:45 am]

BILLING CODE 4310–GJ–P

National Park Service

Blackstone River Valley National Heritage Corridor Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 16, 1997.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 pm at the Douglas Town Hall, Resource Center, 29 Depot St, Douglas, MA for the following reasons:

1. Presentation of the Town of Douglas
2. Overview of Jencks Store Project
3. Commission Business

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Susan K. Moore, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Susan K. Moore, Executive Director of the Commission at the aforementioned address.

Nancy Brittian,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 96–32046 Filed 12–17–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Bandelier National Monument, National Park Service, Los Alamos, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the possession of Bandelier National Monument, National Park Service, Los Alamos, NM.

A detailed assessment of the human remains was made by National Park Service professional staff in consultation with representatives of the Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Pueblo of Zuni, the Hopi Tribe, and Ysleta del Sur Pueblo of Texas.

In 1904, human remains representing three individuals were excavated from the Tsankawi Ruins site by E.A. Hewett and A.V. Kidder before the creation of the Monument. No known individuals were identified. The three associated funerary objects include textile remnants, matting fragments, and one ceramic bowl. Based on the associated funerary objects and surface artifacts, the Tsankawi Ruins site has been dated to ca. 1440–1550 AD.

Between 1915–1917, human remains representing 14 individuals were recovered from the Otowi Ruins site by Dr. Lucy Wilson during legally authorized excavations. No known individuals were identified. No associated funerary objects were present. The Otowi Ruins site has been dated to ca. 1200–1400 AD based on tree ring data and surface artifacts.

Between 1947–1948, human remains representing two individuals were excavated from the Tyuonyi Ruins site during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. The Tyuonyi Ruins site has been dated to ca. 1325–1600 AD based on pottery sherds and tree ring data.

In 1963, human remains representing one individual from the Navawi site were donated to Bandelier National Monument by Chris Benson and John Syska. No known individual was identified. The five associated funerary objects are pottery sherds. The Navawi site is located within Pueblo of San Ildefonso lands, and has been dated to ca. 1400–1500 AD based on the associated funerary objects.

In 1976, human remains representing 12 individuals were recovered from site LA 12119 during legally authorized excavations. No known individuals were identified. The two associated funerary objects are ceramic bowl fragments. Site LA 12119 has been dated to ca. 1100–1200 AD, based on tree ring data.

In 1976, human remains representing two individuals were recovered from site LA 12121 during legally authorized excavations. No known individuals were identified. No associated funerary objects are present. Site LA 12121 has been identified as a pueblo site occupied between ca. 1148–1180 AD, based on tree ring data and archeomagnetic dating.

In August of 1990, human remains representing one individual were recovered from site LA 3852 during legally authorized excavations by Washington State University. No known individual was identified. No associated funerary objects are present. Site LA 3852 has been identified as a pueblo site occupied between ca. 1150–1250 AD based on pottery sherds.

At an unknown date, human remains representing one individual were recovered on the surface from site LA 3849 under unknown conditions. No known individual was identified. No associated funerary objects are present. Site LA 3849 has been dated to ca. 1200–1300 AD based on pottery sherds and lithics.

In 1987, human remains representing one individual were recovered on the surface of site LA 3756 during legally authorized archeological surveys within the monument boundaries. No known individual was identified. No associated funerary objects are present. Site LA 3756 has been dated to ca. 1200–1315 AD based on pottery sherds.

The sites listed above are all within or surrounding the Frijoles Canyon in Bandelier National Monument. Anthropological evidence indicates that Keresan-speaking people (the Pueblo of Acoma, Pueblo of Cochiti, the Pueblo of Laguna, the Pueblo of San Felipe, the Pueblo of Santa Ana, the Pueblo of Santo Domingo, and the Pueblo of Zia) and Tewa-speaking people (the Pueblo of Nambe, the Pueblo of Pojoaque, the Pueblo of San Ildefonso, the Pueblo of San Juan, the Pueblo of Santa Clara, the Pueblo of Tesuque, and the present-day Hano community at Hopi) occupied the Frijoles Canyon and surrounding area by the 1100s based on oral traditions, religious and cultural ties, and anthropological and ethnographic documentation.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 37 individuals of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the ten objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Pueblo of Zuni, the Hopi Tribe, and Ysleta del Sur Pueblo of Texas.

This notice has been sent to officials of the Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Pueblo of Zuni, the Hopi Tribe, and Ysleta del Sur Pueblo of Texas. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Roy W. Weaver, Superintendent, Bandelier National Monument, National Park Service, HCR 1, Box 1, Suite 15, Los Alamos, NM 87544; telephone: (505) 672–3861, before January 17, 1997. Repatriation of the human remains and associated funerary objects to the Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Pueblo of Zuni, the Hopi Tribe, and Ysleta del Sur Pueblo of Texas may begin after that date if no additional claimants come forward.

Dated: December 9, 1996.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 96–32095 Filed 12-17-96; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

Certain Digital Satellite System (DSS) Receivers and Components Thereof; Notice of Investigation

[Inv. No. 337–TA–392]

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 13, 1996, under section 337 of the Tariff Act of 1930, as amended, 17 U.S.C. § 1337, on behalf of Personalized Media Communications, L.L.C., 110 East 42nd Street, Suite 1704, New York, New York 10017. Letters supplementing the complaint were filed on November 25 and December 2, 1996. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital satellite system (DSS) receivers and components thereof by reason of direct, induced, and contributory infringement of claims 3, 6, 7, 12, 15, 35, and 44 of U.S. Letters Patent 5,335,277. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complaint requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Smith R. Brittingham IV, Esq., Office of Unfair Import Investigation, U.S. International Trade Commission, telephone 202–205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (1996).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on December 11, 1996, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital satellite system (DSS) receivers or components thereof by reason of infringement of claims 3, 6, 7, 12, 15, 35, or 44 of U.S. Letters Patent 5,335,277, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complaint is—Personalized Media Communications, L.L.C., 110 East 42nd Street, Suite 1704, New York, New York 10017.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Thomson Consumer Electronics, Inc., 10330 North Meridian Street, Indianapolis, Indiana 46206.

Hughes Network Systems, 11717 Exploration Lane, Germantown, Maryland 20876.

Hitachi Home Electronics (America), Inc., 3890 Steve Reynolds Blvd., Norcross, Georgia 30093.

Toshiba America Consumer Products, Inc., 82 Totowa Road, Wayne, New Jersey 07470.

Matsushita Electric Corporation of America, One Panasonic Way, Secaucus, New Jersey 07094.

DIRECTV, Inc., 2230 E. Imperial Hwy., El Segundo, California 90245.

United States Satellite Broadcasting Co., 3415 University Ave., St. Paul, Minnesota 55114.

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–M, Washington, D.C. 20436, who shall be the Commission investigate attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. § § 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the compliant and the notice of investigation. Extensions of time for submitting responses to the compliant will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the compliant and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: December 11, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–32106 Filed 12–17–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than December 27, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 27, 1996.

The petitioners filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 25th day of November, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adustment Assistance.

Appendix

[Petitions instituted on 11/25/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,935	Borg Warner Automotive (UAW)	Munice, IN	11/11/96	Rear Wheel Drive Manual Transmissions.
32,936	Norman Manufacturing Co. (USWA)	Philadelphia, PA	10/15/96	Electrical Lamps.
32,937	Cogema Resources (USWA)	Mills, WY	10/23/96	Uranium Oxide.
32,938	Ciba-Toms River Site (OCAW)	Toms River, NJ	11/07/96	Dyes for Textile Products Division.
32,939	Eaton Controls Automotive (UPIU)	Wauwatosa, WI	11/06/96	Automotive Controls.
32,940	Genesco, Inc—Laredo (Co.)	Hohenwald, TN	11/07/96	Western Footwear.
32,941	Kimble Glass (AFGW)	Vineland, NJ	10/08/96	Glass Coffee Pots.
32,942	Peach State Limited (Wkrs)	Chester, GA	11/05/96	Shirts.
32,943	Procter and Gamble (Wkrs)	Hatboro, PA	11/08/96	Over The Counter Pharmaceuticals.
32,944	Plaid Clothing Group (UNITE)	Chambersburg, PA	11/08/96	Men's Suits, Slacks, Sportcoats.
32,945	A.O. Smith Electrical (IBEW)	Tipp City, OH	11/06/96	In-Bells, Shafts & Steel Lamina.
32,946	Flintab Machine, Inc (Co.)	North Falmouth, MA	11/06/96	Precision Machine Parts.
32,947	Sunbeam Household Product (Co.)	Coushatta, LA	10/04/96	Irons and Toasters.
32,948	East Tenn. Undergarments (UNITE)	Elizabethton, TN	11/07/96	Ladies' Undergarments.
32,949	Barclay Home Products (Co.)	Cherokee, NC	11/07/96	Quilts.
32,950	Barclay Home Products (Co.)	Robbinsville, NC	11/07/96	Quilts.
32,951	Amp, Inc. (Wkrs)	Erie, PA	11/08/96	Plastic Components for Connectors.
32,952	Permacel (Wkrs)	Lakewood, NJ	10/25/96	CD Roms.
32,953	Petrie Retail, Inc (Wkrs)	Secaucus, NJ	11/06/96	Distribution of Ladies & Girls Clothing.
32,954	Louisiana Pacific (Wkrs)	Ketchikan, AK	11/05/96	Desolving Pulp High Grade Sulphite.
32,955	Philadelphia Sweater Mill (Co.)	Philadelphia, PA	11/13/96	Sweaters.
32,956	Cyress Chemical (Co.)	El Paso, TX	11/06/96	Soaps, Softners for Jeans.
32,957	Apex Sportswear (Co.)	New York, NY	11/18/96	Ladies' Sportswear.
32,958	Jefferson City Mine (USWA)	Jefferson City, TN	11/15/96	Zinc Concentrate.
32,959	Bowdon Manufacturing Co (Wkrs)	Bowdon, GA	11/13/96	Men's & Ladies' Tailored Suits.
32,960	Cabot Perform Materials (ICWUC)	Boyertown, PA	11/12/96	Tantalum and Other Metals.
32,961	Killark Electric Mfg Co (IBEW)	St. Louis, MO	11/14/96	Electrical Components.
32,962	Rayonier, Inc (AWPPW)	Port Angeles, WA	11/13/96	Chemical Wood Pulp.
32,963	Sunbeam Outdoor Products (Co.)	Portland, TN	11/13/96	Outdoor Furniture.
32,964	H.L. Miller & Son (Co.)	Schuykill Have, PA	11/07/96	Knit, Bleach, & Dye Sweatshirt Material.
32,965	Hawk Golf Bag Company (Co.)	Clarion, IA	11/13/96	Golf Bags.
32,966	D.S. Knitting (Wkrs)	White Mills, PA	11/13/96	Children's Sweaters.
32,967	Hashbro, Inc (Wkrs)	Arcade, NY	10/19/96	Baby and Toddler Bibs & Wash Cloths.
32,968	Velco Electronics (Wkrs)	Fishers, NY	10/30/96	Radio & Microprocessor Crystals.
32,969	NEC Technologies, Inc (Wkrs)	Northborough, MA	11/11/96	Personal Computers.
32,970	B.F. Goodrich (IBEW)	Norwich, NY	11/03/96	Aerospace Ignition Products.
32,971	Boyt Company (The) (Wkrs)	Iowa Falls, IA	11/12/96	Luggage.
32,972	Boyt Company (The) (Wkrs)	Bedford, IA	11/12/96	Luggage.

[FR Doc. 96–32098 Filed 12–17–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–32,895]

Control Techniques Drives, Incorporated, Grand Island, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 12, 1996 in response to a worker petition which was filed on October 21, 1996 on behalf of workers at Control Techniques Drives, Inc., Grand Island, New York.

A negative determination applicable to the petitioning group of workers was issued on November 25, 1996 (TA–W–32,885). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 3rd day of December, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–32102 Filed 12–17–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–32,561 Midway, GA; TA–W–32, 561D Haw River, SC]

Kingstree Knits, a Division of Texfi Industries, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 17, 1996, applicable to all workers of Kingstree Knits, A Division of Texfi Industries, Incorporated located in Midway, Georgia. The notice was published in the Federal Register on October 1, 1996 (61 FR 51303). The worker certification was amended November 8, 1996 to include other South Carolina locations. That notice will soon be published in the Federal Register.

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. Company officials report that worker separations will occur at the subject firm's production facility in Haw River, South Carolina. The workers are engaged in employment related to the

production of tee shirts for women, men and boys.

The intent of the Department's certification is to include all workers of Kingstree Knits adversely affected by imports. Accordingly, the Department is again amending the certification to include all workers at the Kingstree Knits, a division of Texfi Industries, Incorporated, Haw River, South Carolina.

The amended notice applicable to TA–W–32,561 is hereby issued as follows:

''All workers at Kingstree Knits, a Division of Texfi Industries, Incorporated, Midway, Georgia (TA–W–32,561), and Haw River, South Carolina (TA–W–32,561D), who became totally or partially separated from employment on or after July 11, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 5th day of December 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–32100 Filed 12–17–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,729]

Kuppenheimer Manufacturing Company, Incorporated A/K/A Walton Clothing Company, Loganville, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance on November 7, 1996, applicable to all workers of Kuppenheimer Manufacturing Company, Incorporated, Loganville, Georgia. The notice will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that Kuppenheimer Manufacturing Company, Incorporated in Loganville, Georgia was formerly Walton Clothing Company. Some of the workers at Kuppenheimer have had their Unemployment Insurance (UI) wages reported to the UI tax account for Walton Clothing Company. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–32,729 is hereby issued as follows:

''All workers of Kuppenheimer Manufacturing Company, Incorporated, also known as Walton Clothing Company, Loganville, Georgia who became totally or partially separated from employment on or after August 25, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 5th day of December 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–32099 Filed 12–17–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32, 906]

Moisture Systems Hopkinton, Massachusetts; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 12, 1996 in response to a worker petition which was filed on November 12, 1996 on behalf of workers at Moisture Systems, Hopkinton, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 3rd day of December, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 96–32103 Filed 12–17–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than December 27, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 27, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of December, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 12/02/96]

TA–W	Subject Firm (Petitioners)	Location	Date of petition	Product(s)
32,973	Wex Tex Industries, Inc (Comp)	Dothan, AL	11/15/96	Pajamas & Robes.
32,974	Sprague, North Adams, Inc (IUE)	North Adams, MA	11/14/96	Capacitors—Electronic Components.
32,975	Big Smith Brands (Wkrs)	Monett, MO	11/11/96	Outerwear Apparel.
32,976	Custom Stitchers II (Wkrs)	Lewiston, ME	10/30/96	Stitched Uppers for Outside Soles.
32,977	Auburn Shoe (Wkrs)	Auburn, ME	11/12/96	Ladies' Shoes.

APPENDIX—Continued

[Petitions Instituted On 12/02/96]

TA–W	Subject Firm (Petitioners)	Location	Date of petition	Product(s)
32,978	CSCS Caribean N.V. (Wkrs)	Miami, FL	10/22/96	Info. Services to Cruise Line Passengers.
32,979	Collegeville Flag & Mfg (Wkrs)	Port Clinton, PA	11/15/96	Flags.
32,980	TRW Vehicle Safety (Wkrs)	Louisville, MS	11/13/96	Seat Belts.
32,981	Dayco Products (USWA)	Waynesville, NC	11/11/96	Automotive Timing Belts.
32,982	Delta Wood (Wkrs)	Trumann, AR	11/07/96	Furniture for Bombay Co.
32,983	Rohr Industries (Wkrs)	Riverside, CA	11/11/96	F–14 Missiles.
32,984	Crossville Apparel Mfg (Wkrs)	Crossville, TN	11/14/96	Golf & Uniform Shirts.
32,985	J.H. Collectibles (UNITE)	Milwaukee, WI	11/21/96	Ladies' Apparel.
32,986	Bell Oil Tools (Comp)	Great Bend, KS	11/08/96	Oil Tools Sales, Rental & Services.
32,987	Vineyard, Inc (The) (Comp)	Clovis, NM	11/14/96	Fabric Covered Bed & Bath Accessories.
32,988	Dazey Corp (Wkrs)	Osage City, KS	11/18/96	Foot Tub, Turbo Spa, Hair Dryer, etc.
32,989	Harbor Bell, Inc (Wkrs)	Bay Center, WA	11/06/96	Frozen Crabmeat, Shrimp, Salmon.
32,990	ASARCO, Inc (Comp)	Leadville, CO	11/13/96	Lead and Zinc Concentrates.
32,991	Channel Lumber Co (Comp)	Craigmont, ID	11/21/96	Dimentional Lumber.
32,992	Concast Metal Products Co (IBT)	Dailey, WV	11/21/96	Bronze Alloy Bar Tubing.
32,993	Grant Prideco (Wkrs)	Bastrop, TX	11/12/96	Fittings for Oil Drill Pipe.
32,994	3-M Co (Wkrs)	Weatherford, OK	11/21/96	Compurter Disks.
32,995	AT&T Communications (CWA)	Odessa, TX	11/20/96	Bilingual Telephone Operators.
32,996	Fruit of the Loom (Wkrs)	Raymondville, TX	11/22/96	Raglan Fleece Sweatshirts.
32,997	General Electric Co (Comp)	Erie, PA	11/21/96	Locomotive Coils—Direct Current Motors.

[FR Doc. 96–32101 Filed 12–17–96; 8:45 am]

BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 12, 1996.

TIME AND DATE: 10:00 a.m., Thursday, December 19, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Midwest Material Company,* Docket No. LAKE 94–126–M (Issues include whether the judge erred in finding that a violation of 30 C.F.R. § 56.14211(a) was not the result of the operator's unwarrantable failure to comply with the regulation).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

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. 96–32251 Filed 12–16–96; 8:45 am]

BILLING CODE 6735–01–M

UNITED STATES NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Oconee Nuclear Station, Units 1, 2, and 3; 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–38, DPR–47, and DPR–55, issued to the Duke Power Company (the licensee), for operation of the Oconee Nuclear Station Units 1, 2, and 3, respectively, located in Seneca, South Carolina.

If approved, the proposed amendments would allow a revision to the Oconee Updated Final Safety Analysis Report to include a one-time emergency power system functional test involving the three Oconee units. The purpose of the test is to verify certain design features of the emergency power system in an integrated fashion. The proposed test procedure involves safety equipment on all three Oconee units and is beyond the scope of tests described in the licensing basis of the units. The licensee has determined that there is a marginal increase in the possibility of a loss of power when compared with the other emergency power system functional tests that have been previously evaluated and that are performed at Oconee. Therefore, the licensee has determined that the tests may involve an unreviewed safety question, which requires prior NRC approval in accordance with 10 CFR 50.90.

The three Oconee units are presently shut down due to an outage resulting from an unexpected shutdown of Oconee Unit 2 on September 24, 1996. Because of this condition, the NRC requested that the licensee consider performance of tests of the emergency electrical system in a letter dated October 18, 1996. Development and analysis of the test procedures led to the licensee's determination that an unreviewed safety question exists. Since the tests are scheduled to start on January 2, 1997, the amendments must be processed prior to that date. Any delay would delay startup of the Oconee units, which requires that the amendments be processed under exigent circumstances.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine 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:

This proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to involve no significant hazards considerations, in 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?

No. For this test all three Oconee units will already be in a shutdown condition, thus there is no chance of an Oconee unit trip, LOCA/LOOP [Loss-of-Coolant Accident/Loss of Offsite Power] scenarios and most UFSAR [Updated Final Safety Analysis Report] analyzed accident scenarios. The UFSAR Loss of Electric Power accident assumes two types of events: (1) Loss of load and (2) Loss of all system and station power. Since all three Oconee units are shutdown during performance of this test, an Oconee unit trip cannot occur. Nothing associated with this test will result in a significant increase in the likelihood of a loss of all system and station power since both Keowee units and the switchyard will remain available. In addition, the gas turbine at Lee Steam station will be available and the SSF [standby shutdown facility] diesel will be operable. The loss of all station power accident analysis assumptions are still valid. Additionally, since the switchyard will remain energized and available, offsite power can quickly be reconnected to the plant.

The Keowee units provide the main source of emergency power for the Oconee units, but they are not accident initiators. This test has no adverse impact on the ability of the Keowee units to satisfy their design requirements of achieving rated speed and voltage within 23 seconds of receipt of an emergency start signal.

Although not a design basis accident, a hypothetical station blackout condition where all offsite power and the Keowee units are lost is described in the UFSAR. As detailed above, this test will not deenergize the switchyard or remove the Keowee units. Thus, emergency power systems will remain available, as well as the SSF diesel, and there is no significant increase in [the] likelihood of a station blackout. The probability of an accident evaluated in the FSAR (LOOP, LOCA, and LOCA/LOOP) will not be significantly increased beyond what has already been evaluated under Technical Specifications.

Calculations using the test configuration, actual core data, and no operator action (except for opening the atmospheric dump valves) for Oconee Units 1 and 2 indicate that core boiling will not occur. Based on the predicted steam generator heat transfer, the peak temperature will be approximately 220°F at approximately 13.5 hours. Since the RCS [Reactor Coolant System] will be pressurized by a nitrogen or steam bubble during the test, the reactor coolant will not boil at 220°F. Core uncovery and possible fuel damage is not considered a concern during the performance of this test. In addition, there is no concern of any significant RCS temperature increase on Oconee Units 1 and 2 during the short periods when DHR [Decay Heat Removal] is interrupted. Fuel will be removed from the Oconee Unit 3 core during performance of this test. There is no adverse impact on containment integrity, radiological release pathways, fuel design, filtration systems, main steam relief valve setpoints, or radwaste systems.

Therefore, based on this analysis and the information presented in Attachment 2 [of the licensee's application], the probability or consequences of an accident previously evaluated will not be significantly increased by the proposed test.

2. Create the possibility of a new or different kind of accident from the accidents previously evaluated?

No. The emergency power system will remain operable and available to mitigate accidents. All three Oconee units will already be in a shutdown condition, so there is no risk of an Oconee unit trip, challenge to the reactor protective system (RPS), LOCA/LOOP scenarios, and most UFSAR analyzed accident scenarios. Since the Oconee units have been shutdown for greater than 60 days, the decay heat loads are relatively low. Additionally, on Oconee Unit 3, the vessel head will be removed and fuel will not be in the core when ECCS [Emergency Core Cooling System] injection occurs. This arrangement precludes any potential fuel assembly/control rod lift or reactivity management concerns.

Preplanning, use of dedicated operators, and independent verification will be employed during critical test phases involving manual manipulation of the 'S' and 'E' breakers. A dedicated technician in contact with the control room will be stationed at the affected cabinet ready to close the appropriate knife switches to re-enable the normal source. These precautions ensure AC power sources are not paralleled. Therefore, based on this analysis and the supporting information in Attachment 2, no new failure modes or credible accident scenarios are postulated.

3. Involve a significant reduction in a margin of safety?

No. No function of any safety related emergency power system/component will be adversely affected or degraded as a result of this test. No safety parameters, setpoints, or design limits are adversely affected. For this test, all three Oconee units will be in a shutdown condition, so there is no risk of an Oconee unit trip, challenge to the reactor protective system (RPS), LOCA/LOOP scenarios, and most UFSAR analyzed accident scenarios. Strictly per the Technical Specifications, ECCS and auxiliary power systems are not required with RCS temperature less than 200°F. However, both the emergency power and DHR systems will remain operable during the test. Decay heat removal will only be briefly interrupted during the simulated LOOP portions of the test. Since the Oconee units have been shutdown for greater than 60 days, the decay heat loads are relatively low, and compensatory measures are in place to ensure heat removal capability can be regained in a timely manner. Additionally, the vessel head will be removed and fuel will not be in the core on Oconee Unit 3 when ECCS injection occurs. There is no adverse impact to the fuel, cladding, RCS, or required containment systems. Therefore, based on this analysis and the supporting information in Attachment 2, the margin of safety is not significantly reduced as a result of this test.

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 15 days after the date of publication of this notice will be considered in making any final determination.

The Commission may issue the license amendment before the expiration of the 15-day notice period if failure to do so would unnecessarily delay startup of the units, 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.

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 January 2, 1997, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the 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 the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, 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 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 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 Mr. Herbert N. Berkow: 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 Mr. J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036, 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 December 11, 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 Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 16th day of December 1996.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–32213 Filed 12–17–96; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 22, 1996, through December 6, 1996. The last biweekly notice was published on December 4, 1996.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests 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 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. The basis for this proposed determination for each amendment request is shown below.

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 before action is taken. 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 a hearing and petitions for leave to intervene is discussed below.

By January 17, 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 for the particular facility involved. 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 a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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 (*Project Director*): 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of 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 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 for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: September 20, 1996.

Description of amendment request: The proposed amendments would update the Pressure Temperature (P–T) curves contained in the Technical Specifications to 22 Effective Full Power Years (EFPYs).

Basis for proposed no significant hazards consideration determination: 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. Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

The proposed changes merely adjust the reference temperature for the limiting beltline material to account for irradiation effects and provide the same level of protection as previously evaluated. The adjusted reference temperature calculations were performed utilizing the guidance contained in Regulatory Guide 1.99, Revision 2. The change is administrative in nature to reflect the extension of the operating limits to 22 EFPY. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed changes do not create the possibility of a new or different kind of accident previously evaluated for Dresden or Quad Cities Stations. No new modes of operation are introduced by the proposed changes. The revised operating limits are merely an update of the old limits by taking into account the effects of irradiation on the limiting reactor vessel material. Use of the revised P–T curves will continue to provide the same level of protection as was previously reviewed and approved. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated change to the P–T curves related to this proposed amendment does not affect any activities or equipment and are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety because:

The proposed amendment reflects an update of the P–T curves to extend the operating limit to 22 EFPY. The revised curves are based on the latest NRC guidance along with actual data for the units. The new limits retain the margin of safety to the level expected for a new vessel, adjusted for irradiation effects as required by 10 CFR, Appendix G, thereby maintaining a conservative margin of safety.

Therefore, the proposed 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.

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: October 31, 1996.

Description of amendment request: The proposed amendments would relocate the requirements for seismic monitoring instrumentation from the Technical Specifications to licensee controlled documents. The Technical Specifications affected are 3/4.3.7.2, ''Seismic Monitoring Instrumentation,'' Table 3.3.7.2–1, ''Seismic Monitoring Instrumentation,'' Table 4.3.7.2–1, ''Seismic Monitoring Instrumentation Surveillance Requirements,'' and Bases Section 3/4.3.7.2, ''Seismic Monitoring Instrumentation.''

Basis for proposed no significant hazards consideration determination: 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) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The function of the seismic monitoring instrumentation is to monitor seismic activity above the Operating-Basis Earthquake (OBE) threshold, and to record observed seismic data for comparison to design basis response spectra. The seismic monitoring instrumentation does not provide any function to mitigate an accident or the consequences of an accident. The replacement seismic monitoring instrumentation will remain in place. The proposed Amendment is not a result of any changes to system function, alarm setpoints, or main control room annunciators. Rather, the Technical Specification requirements (as revised for the replacement instrumentation) are being relocated to licensee-controlled documents in accordance with NRC Generic Letter 95–10.

The proposed change relocates requirements and surveillances for structures, systems, components or variables that do not meet the criteria for inclusion in Technical Specifications as identified in the Application of Selection Criteria to the LaSalle Technical Specifications. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the Technical Specifications to an appropriate administratively controlled document which will be maintained pursuant to 10 CFR 50.59. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are also controlled by 10 CFR 50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards. Therefore, this change does not involve a significant increase in 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 because:

The seismic monitoring instrumentation does not provide any function to mitigate an accident or the consequences of an accident. The replacement seismic monitoring instrumentation will remain in place and will provide the same basic function as the existing instrumentation. The replacement instrumentation will provide enhanced system reliability and will not result in any changes to system function, alarm setpoints, or main control room annunciators. The Technical Specification requirements (as revised for the replacement instrumentation) are being relocated to licensee-controlled documents in accordance with NRC Generic Letter 95–10.

The proposed change does not involve any change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements and adequate control of existing requirements will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

The replacement seismic monitoring instrumentation will have no impact on margin of safety. The intended function of the seismic monitoring instrumentation, i.e. to record observed seismic data for analysis to determine the impact on plant components, will be made more reliable by this modification. The Technical Specification requirements (as revised for the replacement instrumentation) are being relocated to licensee-controlled documents in accordance with NRC Generic Letter 95–10.

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. In addition, the relocated requirements and surveillances for the affected structure, system, component or variable continue to meet the same requirements as the existing Technical Specifications. However, the LCO requirement specified in Section 3.3.7.2.a (to prepare and submit a Special Report to the NRC within 10 days of the seismic monitoring instrumentation being inoperable for more than 30 days) will not be included in the ATR [Administrative Technical Requirements] since the Technical Specification Special Report requirements are only applicable to the LCOs. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety will be permitted.

The existing requirement for NRC review and approval of revisions, in accordance with 10 CFR 50.92, to these details proposed for relocation does not have a specific margin of safety upon which to evaluate. However, since the proposed change is consistent with the BWR Standard Technical Specification, NUREG–1434, Rev. 1 approved by the NRC Staff, revising the Technical Specifications to reflect the approved level of detail ensures no 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 requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: November 7, 1996.

Description of amendment request: The proposed amendments would change Specification 4.3.1.A.4.b from verifying greater than or equal to 17 percent steam generator secondary side wide range water level to greater than or equal to 17 percent steam generator secondary side narrow range water level.

Basis for proposed no significant hazards consideration determination: 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 occurrence of any accident previously evaluated.

Maintaining secondary side steam generator water level greater than or equal to 17 percent by wide range level indication is the current requirement by the technical specifications. By revising the requirement to require using the narrow range water level, no change in operating practices or plant configuration is made. The minimum requirement of 17 percent by narrow range level indication is more restrictive and conservative than 17 percent by wide range indication. The requirement to maintain secondary side steam generator water level greater than or equal to 17 percent by narrow range indication is currently required by operations procedure PT-O, Appendix F–1 and will be maintained. This change ensures that the requirements for natural circulation cooldown are maintained in Mode 4. Therefore, changing this surveillance requirement does not involve a significant increase in the probability or consequences 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). The Technical Specifications will continue to require OPERABLE steam generator(s) for heat removal functions. The Technical Specifications will continue to require the performance of SR 4.3.1.A.4.b. Changing the SR to use narrow level indication correctly states the steam generator water level required to support heat removal function. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes do not result in a significant reduction in a margin of safety because it has no impact on any safety analysis assumptions. The requirement to have OPERABLE steam generator(s) in MODE 4 for heat removal function is maintained. The requirement to perform SR 4.3.1.A.4.b is not changed. Changing the SR to use narrow level indication correctly states the steam generator water level required to support heat

removal function. 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 requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: November 7, 1996.

Description of amendment request: The proposed amendments would change the values for the reduced power range neutron flux high setpoint trip that are specified when one or more code main steam safety valves are inoperable.

Basis for proposed no significant hazards consideration determination: 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 occurrence of any accident previously evaluated.

The requirement to change the Power Range Neutron Flux High Trip setpoints to the Reduced Setpoint Values of Table 3.7–1 for the most restrictive loop if one or more code MSSVs are inoperable is not changed by this amendment. As such, no change in operating practices or plant configuration is being made.

The amendment provides new reduced setpoint values for the Power Range Neutron flux High Trip to ensure that for the limiting transient (Loss of Load/Turbine Trip [LOL/TT]), a secondary side overpressurization condition does not occur. The new values were the result of calculation using an algorithm provided by Westinghouse in Westinghouse Nuclear Safety Advisory Letter NSAL-94–001, ''Operation at Reduced Power Levels with Inoperable MSSVs,'' January 25, 1994. The new values are much more restrictive than the previous values and ensure that the probability or consequences of an accident previously evaluated is not increased. Therefore, the new reduced setpoint values do not involve a significant increase in the probability or consequences 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 change does not require a physical alteration of the plant (no new or different equipment will be installed to implement this change). The Reduced Neutron Flux High Trip setpoints ensure that a secondary side overpressurization transient does not occur for the most limiting transient. In addition, no new modes of operations will be introduced by this change. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

This amendment provides new Reduced Power Range Neutron Flux High Trip setpoints.The Specification that requires the Power Range Neutron Flux High Trip setpoints be changed to the reduced values for one or more inoperable MSSVs is not changed. The reduced Trip setpoints are the result of new calculations using an algorithm provided by Westinghouse in Westinghouse Nuclear Safety Advisory Letter NSAL–94–001, ''Operation at Reduced Power levels with Inoperable MSSVs,'' January 25, 1994, and ensure the LOL/TT transient does not result in a secondary overpressurization. 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 requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: November 7, 1996.

Description of amendment request: The proposed amendments would clarify the operability requirements for the residual heat removal (RHR) loops during core alteration operations.

Basis for proposed no significant hazards consideration determination: 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 occurrence of any accident previously evaluated.

The ability to remove an RHR loop from operation for up to one hour per eight-hour period is currently allowed by technical specification 3.13.9.B.b. By adding a reference to LCO [Limiting Condition for Operation] 3.13.1.A.4. and adding the requirement to suspend CORE ALTERATIONS to Action 3.13.9.B.a. to be consistent with 3.13.9.B.b., no change in operating practices or plant configuration is made. By maintaining the requirement to have an RHR loop in operation during MODE 6, and by requiring CORE ALTERATIONS to be suspended if an RHR loop is not back in operation after one hour, adequate corrective actions are implemented until the RHR loop is restored to operating status. Therefore, operation of the system is consistent with current technical specifications and this change does not involve a significant increase in the probability or consequences 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). The Technical Specifications will continue to require an RHR loop to be in operation during MODE 6, and will only permit the loop to be not in operation for up to one hour in an eight-hour period. The Technical Specifications will continue to require compliance with these limitations and suspension of CORE ALTERATIONS if an RHR loop is not in operation for more than one hour. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes do not result in a significant reduction in a margin of safety because it has no impact on any safety analysis assumptions. The requirement to have an RHR loop in operation during MODE 6 is maintained, along with the ability to remove RHR from operation for up to one hour per eight-hour period. If an RHR loop is not in service beyond 1 hour per TS 3.13.9.B, CORE ALTERATIONS will be suspended. 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 requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One

First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: November 7, 1996.

Description of amendment request: The proposed amendment would revise Technical Specification 4.2.9, Service and Instrument Air System, to add an additional air compressor.

Basis for proposed no significant hazards consideration determination: 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:

The proposed change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Utilizing the existing piping configuration, both the new and the existing air compressors are capable of supporting either portion of the Service and Instrument Air System. The addition of the fourth air compressor will decrease the probability of an accident previously evaluated, because capacity is being added to the system. The consequences of an accident previously evaluated will not be affected by the addition of a fourth air compressor. The Service and Instrument Air System performs the non-safety related function of providing compressed air for service use and moisture free compressed instrument air for control air demands. The instrument air portion is designed so that its operation is required for plant reliability, not plant nuclear safety. Safety-related equipment supplied by instrument air is designed to fail in its safe condition upon loss of instrument air or, safety-related equipment (and nonsafety-related equipment determined to be important to safety) required to operate subsequent to instrument air failure is supplied by backup nitrogen accumulators.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of the equipment in the Service and Instrument Air System is essentially unchanged. The new air compressor is a similar design (nonlubricated), providing additional air volume at a quality comparable to the three existing air compressors. Therefore, the possibility of an accident of a different kind than any previously evaluated has not been created.

(3) Involve a significant reduction in a margin of safety

The Technical Specification does not specify a margin of safety for the operation of the Service and Instrument Air System, other than specifying that [''Instrument and service] air shall be supplied by three, nonlubricated air compressors, each rated at 70 scfm [standard cubic feet per minute]. Instrument air shall also pass through a dryer.'' Addition of a fourth air compressor will increase the available capacity, thus increasing the margin of safety. Therefore, adding the statement ''and one, nonlubricated air compressor rated at 100 scfm'' to Technical Specification 4.2.9. will not reduce 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.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John N. Hannon.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: October 4, 1996.

Description of amendment request: The proposed amendment would revise the surveillance requirements in Technical Specifications (TSs) 4.1.2.3.1, 4.1.2.4.1, 4.5.2.b, and 4.6.2.1.b and associated Bases. The subject surveillance requirements are applicable to the charging/high head safety injection pumps, low head safety injection pump, and the containment quench spray pumps. The proposed changes would replace the current specific test acceptance criteria contained in these surveillance requirements with requirements to verify pump performance in accordance with the Inservice Testing Program, the Emergency Core Cooling System Flow Analysis, or the Containment Integrity Safety Analysis, as applicable. The proposed changes would also make minor editorial changes in these TSs and make conforming changes in the TS Index pages.

Basis for proposed no significant hazards consideration determination: 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The change does not result in a modification to plant equipment nor does it affect the manner in which the plant is operated. Since the physical plant equipment and operating practices are not changed, as noted above, there is no change in the probability of an accident previously evaluated.

The proposed change will not lower the pump performance operability criteria for the charging/high head safety injection, low head safety injection and quench spray pumps, as assumed in the safety analysis. The required values for developed pump head and flow will continue to satisfy accident mitigation requirements and will be maintained and controlled in the Inservice Testing (IST) Programs(s).

Since the proposed change does not lower the pump's performance acceptance criteria, as assumed in the safety analysis, the containment depressurization system will continue to meet its design basis requirements. The proposed change will not impose additional challenges to the containment structure in terms of peak pressure. The calculated offsite dose consequences of a design basis accident (DBA) will remain unchanged since the one hour release duration and source term remain unchanged. The ability of the emergency core cooling system (ECCS) subsystems to provide sufficient emergency core cooling capability in the event of a loss of coolant accident (LOCA) remains unchanged. Therefore, peak cladding temperatures during a LOCA will continue to remain within acceptable limits. The ability of the ECCS subsystems to provide sufficient long term core cooling capability in the recirculation mode during the accident recovery period remains unchanged. The charging pumps, as part of the boron injection system, will continue to provide sufficient flow to ensure negative reactivity control during each mode of facility operation. Future changes to the pump head and flow requirements will be made under the 10 CFR 50.59 process to ensure that the system performance requirements continue to be met.

The proposed change to the Bases section will ensure that safety analyses assumptions for assumed pump performance continue to be met. The words ''required developed head'' will be clearly defined to reflect that they refer to the value(s) assumed in the safety analysis for the pump's developed head at a specific or a given point. The proposed changes to the Index pages and the footnote in LCO 3.1.2.4 are administrative in nature and do not affect plant safety.

Based on the above discussion, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not alter the method of operating the plant. The charging pumps will continue to be in service during plant operation and be available to perform their function as high head safety injection pumps. This proposed change does not pose additional challenges to the design or function of the charging pumps. The low head safety injection and quench spray

systems are accident mitigation systems and are normally in standby. System operation would be initiated as required to mitigate the consequences of a DBA. The charging/high head safety injection, low head safety injection and quench pumps will continue to provide sufficient flow to mitigate the consequences of a DBA. These systems' operation continues [sic] [continue] to fulfill the safety functions for which they were designed and no changes to plant equipment will occur. As a result, an accident which is new or different than any already evaluated in the Updated Final Safety Analysis Report will not be created due to this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety? The surveillance requirements for demonstrating that the pumps are operable will continue to assure the ability of the system to satisfy its design function. Therefore, the proposed change will not affect the ability of these systems to perform their safety function.

The containment systems' design requirements to restore the containment to subatmospheric condition within one hour will continue to be satisfied. This proposed change does not have an effect on the containment peak pressure since the charging/high head safety injection, low head safety injection and quench spray pumps' performance requirements are not being lowered. The ability of the ECCS subsystems to provide sufficient emergency core cooling capability in the event of a LOCA remains unchanged. Therefore, peak cladding temperatures during a LOCA will continue to remain within acceptable limits. The ability of the ECCS subsystems to provide sufficient long term core cooling capability in the recirculation mode during the accident recovery period remains unchanged. The charging pumps, as part of the boron injection system, will continue to provide sufficient flow to ensure negative reactivity control during each mode of facility operation. There is no resultant change in dose consequences since source term remains unchanged and the containment will continue to reach a subatmospheric pressure within the first hour following a DBA.

Each pump's performance requirements will continue to be controlled in a manner to ensure safety analysis assumptions are met.

Therefore, based on the above discussions, it can be concluded that the proposed 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 amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant Units 1 and 2, St. Lucie County, Florida

Date of amendment request: October 31, 1996.

Description of amendment request: The proposed amendments will revise administrative controls Technical Specification (TS) 6.5.1, ''Facility Review Group (FRG),'' and TS 6.8, ''Procedures and Programs.'' The revisions to TS 6.5.1 reduce the scope of procedures and procedure changes which require review by the FRG, transfer approval of certain procedures from the Plant Manager to the FRG, and require copies of FRG meeting minutes be provided to the Plant Manager. The changes to TS 6.8 reflect the corresponding changes in TS 6.5.1, and expand the scope of the section on temporary changes to procedures.

Basis for proposed no significant hazards consideration determination: 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) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments revise certain administrative controls involved with the on-site programmatic process for review and approval of plant procedures. Specifications that are in place to provide assurance that the unit operating staff qualifications are acceptable, and that written procedures are established, implemented and maintained for safety related activities are not being changed. The revisions are consistent with industry standards established pursuant to 10 CFR Part 50, Appendix B, and do not alter any parameter or equipment performance assumptions that are contained in plant safety analyses to evaluate the initiation or consequences of an accident. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments will not change the physical plant or the modes of plant operation defined in the Facility License for either St. Lucie unit. Changes proposed for the administrative controls do not involve the addition or modification of equipment nor do they alter the design or operation of plant systems. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendments revise certain administrative controls involving the on-site programmatic process for review and approval of plant procedures. The scope, or the requirement to establish, maintain, and implement procedures for activities that could affect nuclear safety are not being changed. The proposed changes are consistent with approved industry standards and do not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Therefore, operation of either facility in accordance with its proposed amendment would 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M. S. Ross, Attorney, Florida Power & Light, 11770 US Highway 1, North Palm Beach, Fl 33408.

NRC Project Director: Frederick J. Hebdon.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 31, 1996 (TSCR 205).

Description of amendment request: The proposed change requests deletion of Technical Specification Table 3.5.2 which lists automatic primary containment isolation valves. In addition, this change request clarifies the applicability of an action statement which applies to several limiting conditions for operation in Section 3.5 and deletes closure time requirements for several automatic isolation valves in Section 4.5.F.

Basis for proposed no significant hazards consideration determination: 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 deletion of the automatic primary containment isolation valve Table 3.5.2 and closure times for several valves in Specification 4.5.F.1 are administrative in nature and do not affect the purpose, function, operability and testing requirements of the automatic primary containment isolation valves or the isolation condenser isolation valves. The required action contained in Specification 3.5.A.7 has been moved to the associated specifications and has not changed. Capitalizing definitions and deleting unneeded pages are also administrative changes which enhance the usability of the Technical Specifications. Therefore, the proposed changes do not increase the probability of occurrence or consequence of an accident previously evaluated.

2. The proposed changes are administrative and do not involve a physical change to plant configuration nor do they affect the performance of any equipment. Existing limiting conditions for operation and surveillance requirements are retained. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Deleting the list of valves in Table 3.5.2 and valve closure times in Specification 4.5.F.1 are administrative changes which do not affect the purpose or function of the automatic primary containment isolation valves. The listing of the automatic primary containment isolation valves and stroke time requirements will be in controlled plant procedures. Changes to the list or closure times can be made in accordance with review procedures required by Section 6.5 of the Technical Specifications and 10 CFR 50.59. Similarly, inserting the statement of required action in Specification 3.5.A.7 into the Specifications to which it applies does not modify the condition or the action to be taken and is an administrative change which clarifies the Technical Specifications. Therefore, the margin of safety is not reduced.

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.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: November 12, 1996, as supplemented November 27, 1996 (TSCR 224).

Description of amendment request: The proposed technical specification change will reflect the implementation of the revised 10 CFR Part 20, ''Standards for Protection Against Radiation.''

Basis for proposed no significant hazards consideration determination: 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. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The proposed revisions to the liquid release rate limits and bases and gaseous effluent bases will not result in a change in the types or amounts of effluents released nor will there be an increase in individual or cumulative radiation exposures. In addition, these changes do not impact the operation or design of any plant structures, systems, or components. These changes ensure compliance with 10 CFR 50.36a and 10 CFR 50 Appendix I and result in levels of radioactive materials in effluents being maintained ALARA [as low as is reasonably achievable]. The revision to the high radiation area controls and dose measurement distance will ensure areas are conservatively posted as high radiation areas in compliance with 10 CFR 20.1601(a)(1) and provide controls to ensure individuals are not overexposed. Other proposed changes consist of revisions to 10 CFR 20 references to recognize the new section numbers, and administrative controls for record keeping to maintain compliance with the new Part 20.

These changes will not result in a change to plant design or operation. Therefore, it can be concluded that the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not affect the plant design or operation nor do they result in a change to the configuration of any equipment. There will be no change in the types or increase in the amount of effluents released offsite.

Therefore, this proposed change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed revisions do not involve any change in the types or increase in the amount of effluents released offsite. The proposed changes do not involve any actual change in the methodology used in the control of radioactive wastes or radiological environmental monitoring. The methodology that will be used in the control of radioactive effluents and calculation of effluent monitor setpoints will result in the same effluent release rate as the current methodology now being used. The operational flexibility needed for releases allows the use of limits as proposed. In addition, the changes in measurement distances for determination of high radiation areas will not result in an increase in individual or cumulative occupational radiation exposures since it will result in a more conservative identification of high radiation areas. Compliance with the limits of the new 10 CFR 20.1301 will be demonstrated by operating within the limits of 10 CFR 50 Appendix I and 40 CFR 190. Thus, operation of the facility in accordance with the proposed amendment 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 amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: August 29, 1996, as supplemented October 3, 1996. The October 3, 1996, submittal contained editorial changes only and did not change the initial no significant hazards consideration evaluation.

Description of amendment request: The purpose of this amendment request is to incorporate certain improvements from the Standard Technical Specifications for B&W Plants, NUREG–1430.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

GPU Nuclear has determined that this Technical Specification Change Request involves no significant hazards consideration as defined in 10 CFR 50.92 because:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the

consequences of an accident previously evaluated. The proposed amendment deletes limiting conditions for operation (LCOs) from the TMI–1 Technical Specifications that are no longer required to be addressed in Technical Specifications per 10 CFR 50.36(c)(2)(ii). The proposed amendment deletes Surveillance Requirements from the TMI–1 Technical Specifications that are related to the LCOs to be deleted. These items are addressed in licensee controlled documents. Certain design feature specifications are also to be deleted consistent with the RSTS [Revised Standard Technical Specifications] for B&W plants. The proposed changes do not modify the operation, limits or controls of systems, structures or components relied upon to prevent or mitigate the consequences or accidents previously evaluated.

Also, the reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed changes. Therefore, this change does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because no new failure modes are created by the proposed changes.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety because the proposed amendment does not change any operating limits for reactor operation.

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.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: September 20, 1996.

Description of amendment request: The proposed amendment would revise the Nine Mile Point Unit 1 (NMP1) Technical Specifications that involve the frequencies of surveillance requirements stated in Tables 4.6.2a, 4.6.2b, 4.6.2g, and 4.6.11, and Sections 4.2.5b(1), 4.3.2b, 4.3.6b(1), 4.3.6b(2), 4.3.6b(3), 4.3.6b(4), 4.3.6c(2), 4.6.13b.1, and 4.6.13b.2. The surveillances associated with these tables and sections are currently satisfied during NMP1 refueling outages prior to restart of the unit. The proposed changes would permit surveillance testing either while the reactor is operating or during outage periods not associated with refueling. The requirements of the surveillance sections and tables addressed by this request that are not changed to be performed at power are being changed to allow surveillance credit to be taken for performance of the associated surveillances while the plant is in the Cold Shutdown, Refueling, or Major Maintenance modes. In addition to these proposed changes, typographical errors are corrected.

Basis for proposed no significant hazards consideration determination: The licensee states that: ''The periods between surveillances will not be inappropriately lengthened. For the affected surveillances, NMP1 administrative controls will require that the interval between surveillance testing not exceed a period equal to 1.25 times the nominal 24 months frequency (no longer than 30 months). The NMP1 plant preventive maintenance and surveillance database will be revised accordingly.''

The licensee groups the systems affected by this request into four categories:

Category 1: The associated system will remain operable and able to automatically perform its safety function during performance of surveillances that satisfy the proposed surveillance requirement.

Category 2: The system is required for monitoring purposes only and provides no automatic safety actuation function and redundant, or redundant and alternate channels are available for required monitoring.

Category 3: There is no change in the system configuration or plant operating conditions during the performance of associated surveillances whether the plant is shutdown for refueling or shutdown for maintenance. The surveillances performed to meet the requirements of NMP1 Technical Specifications Tables 4.6.2a Parameter 8 and 4.6.2g Parameter 6 are included in this category and may also be completed in concurrence with a unit shutdown. The only difference between the proposed changes and the normal unit shutdown sequence is that the mode switch may be taken to ''Shutdown'' in order to scram the plant. The response of the plant is the same as it is under the current plant shutdown procedures. There are no other differences in testing techniques or testing criteria from those previously required by the NMP1 Technical Specifications.

Category 4: The system or equipment is isolated or out of service during the performance of the required surveillances. The associated surveillance may be performed concurrently with quarterly valve stroking, at which time the system or equipment is already out of service.

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:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequence of an accident previously evaluated.

Each of the four categories [* * *] are evaluated separately below:

Category 1: The associated systems will remain operable and able to automatically fulfill as designed any required safety functions that may become necessary during performance of required surveillances. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. No plant transients will be initiated as a result of the proposed changes. No initiator of any accident previously evaluated is adversely affected. No system required to actuate to respond to any accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report] is adversely affected by the proposed change.

Category 2: The associated systems will be required for monitoring purposes only and provide no automatic safety actuation function and redundant, or redundant and alternate channels are available for required monitoring. Since redundant monitoring instrumentation will still be available as required by the technical specifications, the associated systems' functions in accident mitigation are not affected. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. No plant transients will be initiated as a result of the proposed changes. No initiator of any accident previously evaluated is adversely affected. No system required to actuate to respond to any accident previously evaluated in the UFSAR is adversely affected by the proposed changes.

Category 3: There will be no change in the system configuration or plant operating conditions during the performance of associated surveillances. The associated system's ability to perform required safety functions will not be affected, whether the plant is shutdown for refueling or shutdown for maintenance. The surveillances performed to meet the requirements of NMP1 Technical Specifications Tables 4.6.2a Parameter B and 4.6.2g Parameter 6 are included in this category and may also be performed in concurrence with a unit shutdown. The only difference between the proposed changes and the normal unit shutdown sequence is that the mode switch

may be taken to ''Shutdown'' in order to scram the plant. The response of the plant is the same as it is under the current plant shutdown procedures. There are no other differences in testing techniques or testing criteria from those previously required by the NMP1 Technical Specifications. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. No unexpected plant transients will be initiated as a result of the proposed changes. No initiator of any accident previously evaluated is adversely affected. No system required to actuate to respond to any accident previously evaluated in the UFSAR is adversely affected by the proposed changes.

Category 4: The associated system or equipment will be isolated or out of service during the performance of the required surveillances. The associated surveillances will be performed during quarterly valve stroking, at which time the system or equipment is already out of service. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. No plant transients will be initiated as a result of the proposed changes. No initiator of any accident previously evaluated is adversely affected. No system required to actuate to respond to any accident previously evaluated in the UFSAR is adversely affected by the proposed changes.

The correction of the typographical errors is administrative only and has no affect on plant systems or procedures. In all cases, equipment used for accident mitigation is not adversely affected. The ability of the operators to safely shut down NMP1 is not impaired. The changes will not adversely affect any accident precursor or initiator of any accident. For these reasons, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Each of the four categories [* * *] are evaluated separately below.

Category 1: The associated systems will remain operable and able to automatically perform as designed any required safety functions that may become necessary during performance of required surveillances. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. No accident initiator or failure of a different type than previously identified in the UFSAR is introduced. No different or new plant transients may result from those previously evaluated in the UFSAR.

Category 2: The associated systems will be required for monitoring purposes only and provide no automatic safety actuation function. Since redundant, or redundant and alternate monitoring instrumentation will still be available as required by the technical specifications, the associated systems' functions in accident mitigation are not affected. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. No accident initiator or failure of a different type than previously identified in the UFSAR is introduced. No different or new plant transients may result from those previously evaluated in the UFSAR.

Category 3: There will be no change in the system configuration or plant operating conditions during the performance of associated surveillances. The associated system's ability to perform required safety functions will not be affected, whether the plant is shutdown for refueling or shutdown for maintenance. The surveillances performed to meet the requirements of NMP1 Technical Specifications Tables 4.6.2a Parameter 8 and 4.6.2g Parameter 6 are included in this category and may also be performed in concurrence with a unit shutdown. The only difference between the proposed changes and the normal unit shutdown sequence is that the mode switch may be taken to ''Shutdown'' in order to scram the plant. The response of the plant is the same as it is under the current plant shutdown procedures. There are no other differences in testing techniques or testing criteria from those previously required by the NMP1 Technical Specifications. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. No unexpected plant transients will be initiated as a result of the proposed changes. No accident initiator or failure of a different type than previously identified in the UFSAR is introduced. No different or new plant transients may result from those previously evaluated in the UFSAR.

Category 4: The associated system or equipment will be isolated or out of service during the performance of the required surveillance. The associated surveillances will be performed during quarterly valve stroking, at which time the system or equipment is already out of service. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. No plant transients will be initiated as a result of the proposed changes. No accident initiator or failure of a different type than previously identified in the UFSAR is introduced. No different or new plant transients may result from those previously evaluated in the UFSAR.

The correction of the typographical errors is administrative only and has no affect on plant systems or procedures. In all cases, the changes will not adversely affect any accident precursor or initiator of any accident and, therefore, the changes do not introduce any new failure modes or conditions that may create a new or different accident. For these reasons, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Each of the four categories [* * *] are evaluated separately below.

Category 1: The associated systems will remain operable and able to automatically perform required safety functions during performance of surveillances that satisfy the surveillance requirement. There will be no effective change in the interval of the affected surveillances. The probability of instrument drift or the ability to detect a failed or drifted instrument remains unchanged. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. No system required to actuate to respond to any accident is adversely affected by the proposed changes. Since each system's operability is not affected, the margin of safety associated with these systems will not be significantly reduced.

Category 2: The associated systems will be required for monitoring purposes only and provide no automatic safety actuation function. Redundant, or redundant and alternate monitoring instrumentation will still be available as required by the technical specifications during the performance of the associated surveillances. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. There will be no effective change in the intervals of the affected surveillances. The probability of instrument drift or the ability to detect a failed or drifted instrument remains unchanged. No plant transients will be initiated as a result of the proposed changes. No initiator of any accident previously evaluated is adversely affected. No system required to actuate to respond to any accident is adversely affected by the proposed changes. Therefore, the associated systems' functions in accident mitigation are not affected, and no margin of safety will be significantly reduced.

Category 3: There will be no change in the system configuration or plant operating conditions during the performance of associated surveillances, the associated system's ability to perform required safety functions will not be affected, whether the plant is shutdown for refueling or shutdown for maintenance. The surveillances performed to meet the requirements of NMP1 Technical Specifications Tables 4.6.2a Parameter 8 and 4.6.2g Parameter 6 may also be completed in concurrence with a unit shutdown. The only difference between the proposed changes and the normal unit shutdown sequence is that the mode switch may be taken to ''Shutdown'' in order to

scram the plant. The response of the plant is the same as it is under the current plant shutdown procedures. There are no other differences in testing techniques or testing criteria from those previously required by the NMP1 Technical Specifications. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. There will be no effective change in the intervals of the affected surveillances. The probability of instrument drift or the ability to detect a failed or drifted instrument remains unchanged. No unexpected plant transients will be initiated as a result of the proposed changes. No initiator of any accident if adversely affected. No system required to actuate to respond to any accident previously evaluated is adversely affected by the proposed changes. Therefore, no margin of safety will be significantly reduced.

Category 4: The associated system or equipment will be isolated or out of service during the performance of the required surveillances. The associated surveillances will be performed during quarterly valve stroking, at which time the system or equipment will already be out of service. No physical change to the plant design, materials, or standards is involved. No change to instrumentation operating characteristics outside current tolerances will be made. There will be no effective change in the intervals of the affected surveillances. The probability of instrument drift or the ability to detect a failed or drifted instrument remains unchanged. No plant transients will be initiated as a result of the proposed changes. No accident initiator or failure of a different type than identified in the UFSAR is introduced. Therefore, no margin of safety will be significantly reduced.

The correction of the typographical errors is administrative only and has no affect on plant systems or procedures. In all cases, the changes will not adversely affect any accident precursor or initiator of any accident and, therefore, the changes do not introduce any new failure modes or conditions that may create a new or different accident. None of the proposed changes involve physical modification of the plant or alterations to any accident or transient analysis. Therefore, for this and the above reasons, these proposed changes do not involve any 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa, Acting Director.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 16, 1996.

Description of amendment request: The proposed amendment would change certain requirements stated in Technical Specification 3/4.8.1, ''AC Sources''. The requirements are related to the emergency diesel generators (EDGs). The proposed changes would:

1. Increase the EDG fuel storage system minimum volume requirements specified in Limiting Condition for Operation 3.8.1.1.b.2;

2. Add a footnote applicable to Surveillance Requirement 4.8.1.1.2.f to qualify the words during shutdown. The footnote would allow the option of performing selected surveillances, or portions thereof, during conditions or modes other than shutdown;

3. Delete from Surveillance Requirement 4.8.1.1.2.f.14 the requirement to verify that the cooling tower fans start automatically on a Tower Actuation signal; and

4. Delete Surveillance Requirement 4.8.1.1.2.h.2 which specifies performing a periodic pressure test on the ASME Code Class 3 diesel fuel oil piping.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)).

1. Limiting Condition for Operation 3.8.1.1.b.2

The proposed change increases the minimum EDG fuel oil storage requirement to account for various factors that may affect the fuel consumption rate. The revised storage requirement reflects actual EDG test data and accounts for external variables including fuel oil specific gravity, heating value of the fuel, and ambient conditions. The proposed increase in the minimum volume storage requirement is conservative and ensures that there will be at least a 7 day supply of fuel oil stored for each EDG to meet the maximum Engineered Safety Feature load requirements following a loss of power and a design basis accident as described in Updated Final Safety Analysis Report (UFSAR) Section 9.5.4.1, Diesel Generator Fuel Oil Storage and Transfer System—Design Basis. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Surveillance Requirement 4.8.1.1.2.f

The proposed change qualifies the requirement to perform EDG surveillance requirements ''during shutdown''. Because the terms Hot Shutdown and Cold Shutdown are defined in the TSs as operating modes or conditions, the requirement to perform certain surveillances during shutdown may be misinterpreted, as noted in NRC Generic Letter 91–04. The proposed footnote would permit certain maintenance and testing activities to be performed during conditions or modes other than shutdown. The proposed footnote to Surveillance Requirement 4.8.1.1.2.f would not alter the intent or the method by which the surveillances are conducted, and the acceptance criteria for the surveillances would be unchanged. The footnote would not degrade the ability of the EDGs to perform their intended function, and it would not affect the response of the EDGs to a loss of power as described in the UFSAR. Since plant response to an accident would not change and since failure of an EDG could not initiate any of the accidents evaluated in the UFSAR, the proposed footnote would not alter the probability or consequences of an accident previously analyzed.

3. Surveillance Requirement 4.8.1.1.2.f.14

The cooling tower functions as the ultimate heat sink following a seismic event which results in blockage of the circulating water tunnels and therefore a loss of service water. Amendment 18 eliminated the requirement for automatic start of the cooling tower fans; therefore, the automatic-start function for the cooling tower fans has been defeated by placing the control switch in ''Pull-to-Lock''. The proposed change to delete the automatic fan start reference from Surveillance Requirement 4.8.1.1.2.f.14 is administrative only to correct an oversight since the requirement should have been deleted with the issuance of Amendment 18. The proposed deletion does not affect the manner by which the facility is operated or involve any

changes to equipment or features which affect the operational characteristics of the facility. Since there is no change to the facility or operating procedures, there is no affect upon the probability or consequences of any accident previously analyzed.

4. Surveillance Requirement 4.8.1.1.2.h.2

The ASME Code, Section XI, including applicable ASME Code Cases as authorized by the NRC, provides alternate test methods to use in lieu of a 110% hydrostatic pressure test that is not practical to perform on the EDG fuel oil system as currently designed. With the proposed deletion of Surveillance Requirement 4.8.1.1.2.h.2, the provisions of Surveillance Requirement 4.0.5 and the ASME Code along with NRC-authorized Code Cases would be utilized as an equivalent testing requirement to ensure the continued integrity of the diesel fuel oil system. Therefore, since the reliability of the EDG fuel oil system will not be reduced, the probability or consequences of any accident previously evaluated is not increased.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)).

1. Limiting Condition for Operation 3.8.1.1.b.2

The proposed minimum fuel storage requirement has been developed using actual EDG performance data and accounting for possible variations in fuel oil specific gravity, heating value of the fuel, and ambient conditions. The proposed change will provide additional assurance that there will be at least a 7 day supply of fuel oil to meet the maximum Engineered Safety Feature load requirements following a loss of power and a design basis accident. The amount of fuel oil stored has no effect upon the initiation of any accident sequence, therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

2. Surveillance Requirement 4.8.1.1.2.f

The proposed change to allow the option (as supported by a 10 CFR 50.59 safety evaluation) of performing selected surveillance tests, or portions thereof, during conditions or modes other than during shutdown does not affect the operation or response of any plant equipment, including the EDGs, or introduce any new failure mechanism. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Surveillance Requirement 4.8.1.1.2.f.14

Amendment 18 to the Seabrook Station Operating License approved the change in the cooling tower operating mode from automatic actuation to manual actuation. The proposed change to Surveillance Requirement 4.8.1.1.2.f.14 does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because it does not affect the manner by which the facility has been operated since Amendment 18 was issued, involve any changes to equipment or features which affect the operational characteristics of the facility, or introduce a new failure mode. The proposed change merely corrects an oversight in that the requirement should have been deleted when Amendment 18 was issued.

4. Surveillance Requirement 4.8.1.1.2.h.2

The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because it does not affect the manner by which the facility is operated as assumed in the design analysis or Safety Evaluation, involve any changes to equipment or features which affect the operational characteristics of the facility, or introduce a new failure mode. The proposed change merely provides a practical alternate test method using methods acceptable per Section XI of the ASME Code, applicable ASME Code Cases as authorized by the NRC, and Regulatory Guide (RG) 1.137, ''Fuel-Oil Systems at Nuclear Power Plants,'' Revision 1, October 1979. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)).

1. Limiting Condition for Operation 3.8.1.1.b.2

The proposed change does not reduce the ability of the EDGs to provide sufficient power for at least 7 days to meet the maximum Engineered Safety Feature load requirements following a loss of power and a design basis accident as described in UFSAR Section 9.5.4.1.

2. Surveillance Requirement 4.8.1.1.2.f

The proposed change does not reduce the ability of the EDGs to provide sufficient power to meet the maximum Engineered Safety Feature load requirements following a loss of power and a design basis accident as described in the UFSAR. Performing certain surveillances during conditions or modes other than shutdown (as supported by a 10 CFR 50.59 safety evaluation) does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because it does not affect the manner by which the facility is operated as assumed in the design analysis or Safety Evaluation, involve any changes to equipment or features which affect the operational characteristics of the facility. The proposed change will continue to ensure the reliability of the EDGs to perform their intended function.

3. Surveillance Requirement 4.8.1.1.2.f.14

The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because it does not affect the manner by which the facility has operated since Amendment 18 was issued, involve any changes to equipment or features which affect the operational characteristics of the facility, or introduce a new failure mode. The proposed change merely corrects an oversight in that the requirement should have been deleted when Amendment 18 was issued.

4. Surveillance Requirement 4.8.1.1.2.h.2

The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because it does not affect the manner by which the facility is operated or involve any changes to equipment or features which affect the operational characteristics of the facility. The proposed change will continue to ensure the reliability of the EDG fuel oil system. The proposed change merely provides a practical alternate test method using methods acceptable per Section XI of the ASME Code, applicable ASME Code Cases as authorized by the NRC, and Regulatory Guide (RG) 1.137, ''Fuel-Oil Systems at Nuclear Power Plants,'' Revision 1, October 1979.

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.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esquire, Northeast Utilities

Service Company, Post Office Box 270, Hartford CT 06141–0270.

NRC Project Director: S. Singh Bajwa, Acting.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 17, 1996.

Description of amendment request: The proposed amendment would delete certain instrumentation requirements stated in Technical Specification (TS) 3/4.3, Instrumentation. The deleted requirements would be relocated to the Seabrook Station Technical Requirements Manual (SSTR). The associated Bases for the deleted TS requirements will be deleted also, but they will not be incorporated into the SSTR. The following Limiting Conditions for Operation (LCO) and associated Surveillance Requirements (SRs) would be relocated to the SSTR:

Technical specification	Title
LCO—3.3.3.2	Incore Detector System.
LCO—3.3.3.3 and associated SRs & Tables.	Seismic Instrumentation.
LCO—3.3.3.4 and associated SRs & Tables.	Meteorological Instrumentation
LCO—3.3.4 and associated SRs.	Turbine Overspeed Protection.

The proposed amendment would also delete (without relocating to the SSTR) the reference to the location of the meteorological tower from TS 5.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes do not involve any physical changes to the plant, do not alter the way any structure, system or component functions, do not modify the manner in which the plant is operated, do not impact the physical protective boundaries of the plant, and do not decrease the effectiveness of administrative controls for assuring safe operation of the facility. The instrumentation-related systems are not considered a design feature or an operating restriction that is an initial condition of a design basis accident or transient analysis, nor do they function in any way to mitigate the consequences of a design basis accident or transient.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the proposed changes do not involve any physical changes to the plant, do not alter the way any structure, system or component functions, do not modify the manner in which the plant is operated, do not impact the physical protective boundaries of the plant, and do not decrease the effectiveness of administrative controls for assuring safe operation of the facility.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not involve any physical changes to the plant, do not alter the way any structure, system or component functions, do not modify the manner in which the plant is operated, do not impact the physical protective boundaries of the plant, and do not decrease the effectiveness of administrative controls for assuring safe operation of the facility. Further, the proposed changes do not affect the ability of systems, structures or components important to safety to perform their intended function.

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.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esquire, Northeast Utilities Service Company, Post Office Box 270, Hartford CT 06141–0270.

NRC Project Director: S. Singh Bajwa, Acting.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: March 20, 1996 and as supplemented on July 25, 1996.

Description of amendment request: The amendments would modify the Susquehanna Steam Electric Station (SSES), Units 1 and 2, Technical Specifications to change the ''open'' logic for the high pressure core injection (HPCI) suction valves HV–155/255–F042 in order to eliminate the HPCI pump auto-transfer on high suppression pool level.

Basis for proposed no significant hazards consideration determination: 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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Based on the following discussion for the containment, reactor building, HPCI and RCIC [reactor core isolation cooling] systems, and the safety-related valves in piping connected to the suppression pool, the proposed action does not increase the probability or consequences of an accident previously evaluated. Primary Containment and Reactor Building Safety-Related Systems, Structures, and Components Affected by LOCA/SRV [Loss-of-coolant-accident/safety relief valve] Hydrodynamic Loads

As discussed in the Safety Assessment for this change, elimination of the HPCI auto suction transfer on high suppression pool level will allow higher suppression pool water levels in accidents and transients which involve HPCI operation. The impact of the higher suppression pool levels were examined for the following design-basis accidents and transients:

Loss of Coolant Accidents inside containment (FSAR [Final Safety Analysis Report] *6.2.1.1.3.3),

Inadvertent Safety/Relief valve opening (FSAR *15.1.4),

Primary system break outside containment (FSAR *3.6A),

Inadvertent HPCI initiation (FSAR *15.5.1),

Loss of feedwater flow (FSAR *15.2.7),

Loss of Offsite AC Power (FSAR *15.2.6),

Loss of Main Condenser vacuum (FSAR *15.2.5),

Inadvertent MSIV closure (FSAR *15.2.4),

Turbine trip (with and without bypass) (FSAR *15.2.3),

Generator Load Rejection (with and without bypass), (FSAR *15.2.2), and

Pressure regulator failure-closed/open (FSAR *15.2.1 & 15.1.3).

These accidents and transients were selected for evaluation because they involve an initiation of the HPCI system either inadvertently or as a result of a decrease in vessel inventory and/or coolant level. Two special events, ATWS and SBO, are also considered along with the design basis events listed above.

It was concluded that design-basis SRV and LOCA loads envelop the loads expected with the proposed change. Therefore, the proposed change does not increase the failure probability of any primary containment or reactor building structure, system or component which is affected by LOCA/SRV hydrodynamic loads. The major findings which lead to this conclusion about SRV and LOCA loads are summarized below:

DBA [design basis accident] dynamic pressure loads are based on a maximum initial suppression pool level of 24 feet. The proposed modification to the HPCI suction

transfer logic does not affect the initial pool level or the initial suppression chamber air space volume. During normal plant operation, suppression pool level (and hence suppression chamber air space volume) is controlled by Technical Specification requirements.

For LOCAs other than the DBA, the containment is designed for ADS [automatic depressurization system] blowdown loads in combination with the LOCA loads. For an intermediate break, the proposed HPCI modification does allow suppression pool level to exceed 24 feet by a small amount. ADS loads are, however, independent of suppression pool level when the downcomer vents are cleared. Therefore, the proposed modification has no influence on ADS hydrodynamic loads for an intermediate break.

For small breaks, HPCI injection prevents ADS actuation. Nevertheless, SRV actuations occur during the RPV [reactor pressure vessel] cooldown. Downcomer vents are opened in the beginning part of the accident, but close later on as the break enthalpy decreases. When the downcomer vents are cleared, the level inside the SRV tailpipe is not influenced by pool level, and therefore, the SRV hydrodynamic loads are unaffected by the proposed modification. During the phase of the accident in which the downcomer vents are sealed with water, there are no wetwell LOCA hydrodynamic loads, but the SRV loads are dependent on SP [suppression pool] water level. In this case, SRV loads are acceptable because SP water level is always below the Load Limit curve.

ADS actuation would be required in the event of a HPCI failure during a small-break accident. If HPCI fails during the phase of the accident in which the downcomer vents are cleared, then ADS loads would be acceptable because water level (and air volume) within the SRV tailpipes is independent of pool level. Even if HPCI failure occurs in the latter part of the accident where the downcomer vents are sealed, ADS loads are acceptable because water level is always well below the Load Limit curve.

Under non-LOCA conditions, the containment is designed for simultaneous actuation of all 16 SRVs. The Load Limit Line defines the acceptable operating region, in terms of reactor pressure and suppression pool level, for actuation of all 16 SRVs. Following a plant transient involving HPCI operation, the suppression pool level is always below the Load Limit curve, and only a small number of SRVs actuate to remove decay heat from the reactor.

HPCI System

The proposed change does not increase the probability of an equipment malfunction in the HPCI system. In fact, the change eliminates the potential failure of the HPCI suction auto-transfer on high suppression pool level since that logic is removed. Potential spurious auto-transfer associated with high suppression pool logic is also eliminated. HPCI suction auto-transfer on low CST [condensate storage tank] level and its potential to fail are unchanged by this change. Also, the change does not affect the manual suction transfer from the CST to the suppression pool.

As discussed in the safety assessment for this change, the proposed change has no adverse effects on HPCI valves, pump, or turbine. Therefore, elimination of the HPCI suction auto transfer logic (on high suppression pool level) does not increase the probability of a HPCI malfunction. The consequence of a HPCI failure in a design-basis accident is evaluated in NEDC–32071P Rev.1, ''Susquehanna Steam Electric Station Units 1 and 2 SAFER/GESTR-LOCA Loss-of-Coolant Accident Analysis.'' With regard to the fuel, the consequence of a HPCI failure is unaffected by the proposed change.

If HPCI fails in a design-basis small break accident, ADS actuation would be required. ADS loads continue to be enveloped by design loads with the proposed change. Therefore, the proposed change does not increase the consequences of a HPCI failure.

HPCI Relay Panel 1C620(2C620) & 250 V DC Control Center 1D264(2D264)

On a component level, the failure probability and consequences of failure associated with the AX [auxiliary] relay in 250 VDC Control Center 1D264 (2D264) are eliminated because the relay is disconnected and removed by this modification. Since the control functions of K19 in panel 1C620 (2C620) have been eliminated, the failure of the relay has no effect on HPCI suction valve F042 operation.

The 250 VDC Control Center 1D264 (2D264) and HPCI Relay Panel 1C620 (2C620) both receive power from battery systems during Station Blackout. Removal of the relay from 250 VDC Control Center 1D264 (2D264) and the replacement of the relay in HPCI Relay Panel 1C620 (2C620) decreases the load on the battery systems by a small amount. The change in battery load and line voltage drop is negligible and is documented in applicable calculations. Dynamic qualification of the subject equipment is not adversely affected by this modification as documented in applicable calculations.

RCIC Turbine

As discussed in the safety assessment for this change, RCIC is used to provide coolant makeup following a reactor vessel isolation and for an Appendix R shutdown scenario. The Appendix R event also assumes the reactor vessel is isolated. These events are discussed in Section 15.2.4 of the FSAR and in the FPRR [fire protection review report]. The proposed change has no adverse effects on RCIC turbine operation following a MSIV [main steam isolation valve] closure (see discussion in the safety assessment for this change [letter dated March 20, 1996, as supplemented July 25, 1996]). Therefore, there is no increase in the RCIC failure probability for the MSIV-closure event or the Appendix R shutdown scenario. The consequence of RCIC failure is unchanged by the proposed modification; if RCIC fails, HPCI is available as a backup system.[1] [All footnotes are listed at the end of the no signficant hazards basis section.]

Although RCIC is not designed for mitigation of a small break accident, the effect of the proposed change on RCIC turbine operation for such an accident was evaluated in the safety assessment for this change. The assessment concludes that the proposed change has no adverse effects on RCIC operation, and therefore, there is no increase in RCIC failure probability during a small break accident. Failure of RCIC in a small break accident would require ADS initiation only for a particular break flow which is slightly greater than HPCI injection capability. But ADS initiation has already been considered when evaluating the consequences of HPCI failure during a small break accident.

Safety-Related Valves on Piping Connected to Suppression Chamber

MOVs [motor operated valves]—The proposed change could potentially lead to a maximum suppression pool level of 26 feet in a design-basis accident. This is 2 feet above the maximum design level of 24 feet. As discussed in the safety assessment for this change, this is equivalent to a pressure increase of 0.86 psi at the bottom of the suppression pool. This small pressure increase has negligible effect on valve operation, and therefore, there is no increase in the probability of a failure or malfunction of valves in piping connected to the suppression pool.

Vacuum Breakers—Allowing suppression pool level to potentially increase to 26 feet in a design-basis accident does not affect the failure probability of downcomer-vent vacuum breakers because the level is well below the vacuum breaker elevation of 42 feet.

SRVs/Tailpipes—As discussed in the safety assessment for this change, the increased suppression pool level associated with the proposed change does not have any adverse effect on SRV operation or on the structural integrity of the SRV tailpipe.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Based on the following discussion for the containment, reactor building, HPCI and RCIC systems, and the safety-related valves in piping connected to the suppression pool, the proposed action does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The following discussion concerning the impact of the change on the primary containment, the reactor building, the HPCI system, and safety-related valves, provides the basis for this conclusion.

Primary Containment and Reactor Building Safety-Related Systems, Structures, and Components Affected by LOCA/SRV Hydrodynamic Loads

The HPCI suction transfer logic is not necessary to maintain LOCA loads within design limits because these dynamic pressure loads are characterized in terms of the SP level at the initiation of the accident. That is, LOCA blowdown tests were conducted without the removal of water from the suppression chamber section of the test tank.[2] The increase in pool level realized during these tests was proto-typical of the pool level increase expected at Susquehanna. Removal of the HPCI suction transfer logic on high pool level does not affect suppression pool level at the initiation of a DBA.[3]

In addition, the HPCI suction transfer logic is not necessary to maintain SRV/ADS blowdown loads within design limits. SRV dynamic pressure loads consist of two components: air clearing loads and steam condensation loads. The steam condensation loads are bounded by the more severe air clearing loads which are caused by gas bubble oscillations following the expulsion of noncondensible gas from the SRV tailpipe. Air clearing loads are a function of reactor pressure and water level inside the SRV tailpipe.

Depending on the break size and location, the downcomer vents may be cleared for the entire time that HPCI is operating, or they may reseal in the latter part of the accident. When the downcomer vents are cleared, the level inside the SRV tailpipe is depressed to the elevation coinciding with the bottom of the downcomer pipes, and it is therefore decoupled from the rising suppression pool level. In this situation SRV air-clearing loads are unaffected by the proposed change.

When the downcomer vents are sealed with water, the Load Limit line can be used to determine if SRV/ADS loads are enveloped by design loads. For the most limiting event, which is the small break LOCA, the overall safety margin increases as pool level rises during the event. This is because the decrease in reactor pressure more than offsets the adverse effects associated with the rise in pool level.

Since LOCA and SRV dynamic loads remain bounded by design loads, dynamic loading of primary containment and reactor building structures, systems, and components are unaffected by the proposed change. Therefore, with respect to dynamic loads, the proposed change does not create the possibility for an accident or malfunction of a different type than any evaluated in the SAR [Safety Analysis Report].

HPCI System

There are no new HPCI turbine failure modes introduced by the higher suppression pool levels which can occur with the proposed change. Turbine exhaust pressure remains well below the design limit of 65 psia. In addition, the higher pool level does not create the possibility of water hammer damage to the turbine discharge piping. If the operator fails to control RPV level less than +54″ (single operator error) in the long-term part of the small-break accident when suppression pool level is greater than 25.6 feet, leakage through check valve F049 is such that it will be contained well within the volume of the turbine-discharge-line drain pot. Note that suppression pool level is limited to 26 feet by operator action. Furthermore, suppression pool level can reach 26 feet only for a particular range of small breaks, and for this range of small breaks, suppression pool level would exceed 25.6 feet for only approximately 10 minutes of the accident duration. This corresponds to about 10% of the time that HPCI is operating. Thus it is very unlikely that HPCI would trip with pool level greater than 25.6 feet.

If check valve F049 is failed during the small-break accident (single equipment failure), the turbine exhaust line would become flooded if the HPCI system tripped during the 10 minute interval when suppression pool level greater than 26 feet; however, it is not necessary to postulate an operator error (failure to control RPV level less than +54″) along with the check valve failure. A small break accident with failure of check valve F049 and failure of the operator to control RPV level as required by the EOPs [emergency operating procedures], in a narrow time interval during the long-term part of the accident, is beyond the plant design basis.

A new type of malfunction does not occur even in the beyond-design-basis condition where failure of check valve F049 is considered along with failure of the operator to control RPV level less than 54″ in the narrow time interval when pool level is greater than 25.6. With these failures, the turbine exhaust piping will become flooded, and the system may fail on restart. The General Electric Company has performed an analysis to determine the consequences of a HPCI start with flooding of the turbine and adjacent exhaust line.[4] The analysis, which addresses a potential design deficiency in the HPCI barometric condenser, shows that the containment penetration head fitting and interface piping will not fail as a result of the water hammer associated with the HPCI start. Since failure of the HPCI system is already considered in the plant design-basis accident analysis; this is not a different type of malfunction than that already considered.

HPCI Relay Panel 1C620(2C620) & 250 V DC Control Center 1D264(2D264)

No new failure modes are introduced by the hardware changes in the 250 VDC Control Center 1D264 (2D264) and HPCI Relay Panel 1C620 (2C620). Some failure modes are eliminated by the proposed change. Specifically, the potential failure of the HPCI suction auto-transfer on high suppression pool level is eliminated since that logic is removed. Potential spurious auto-transfer associated with high suppression pool logic is also eliminated. HPCI suction auto-transfer on low CST level and its potential to fail are unchanged by this change.

On a component level, potential failure modes for the AX relay in 250 VDC Control Center 1D264 (2D264) are eliminated by this modification because the relay is disconnected and removed by this change. The potential failure modes for the relay K19 in panel 1C620 (2C620) are unchanged. Since the control functions of K19 have been eliminated, the failure of the relay has no effect on HPCI suction valve F042 operation.

Removal of the relay from 250 VDC Control Center 1D264 (2D264) and the replacement of the relay in the HPCI Relay Panel 1C620 (2C620) changes the load on the battery systems by a small amount. The change in battery load and change in line voltage drop are negligible and they do not adversely affect the performance of the panels or battery systems. In addition, seismic qualification of the panels is not adversely affected by this change.

RCIC Turbine

As discussed in the safety assessment for this change, the proposed change has no adverse effects on RCIC turbine operation. Therefore, the proposed change cannot result in a new RCIC failure mode.

Safety-Related Valves on Piping Connected to Suppression Chamber

MOVs—The increased suppression pool water level which can occur as a result of the proposed change does not create a failure mechanism for safety-related valves on piping connected to the suppression pool. The pressure differential for any valve on piping connected to the suppression pool will increase by at most 0.86 psi. This change in differential pressure has negligible effect on valve operation.

Vacuum Breakers—The proposed change cannot lead to malfunction of the downcomer-vent vacuum breakers as the maximum level expected in a design-basis event is 26 feet, and the vacuum breakers are located at 42 feet above the suppression pool floor.

SRVs/Tailpipes—There is no interaction between increased suppression pool level and SRV operation since the flow through the SRVs is choked and therefore decoupled from downstream conditions. Also, the increased suppression pool level cannot lead to failure of the SRV tailpipe because the potential level increase is well below the SRV Tailpipe Level Limit.[5] If suppression pool water level is below this limit, there is no concern of tailpipe failure due to overpressurization. The minimum value of the SRV Tailpipe Level Limit is 35 feet.[6] This is 9 feet above the maximum level expected in a design-basis accident. For beyond-design-basis events, SRV tailpipe integrity is protected by the EOP requirement to depressurize the reactor on the SRV Tailpipe Level Limit.

3. The proposed change does not involve a significant reduction in a margin of safety.

Based on the following discussion for the containment, reactor building, HPCI and RCIC system, and the safety-related valves in piping connected to the suppression pool, the proposed action does not involve a significant reduction in a margin of safety.

HPCI System

The HPCI Technical Specifications ensure that the system is capable of providing adequate core cooling to limit clad temperatures in the event of a small break LOCA which does not result in rapid depressurization of the RPV (Technical Specification Section 3/4.5.1 & 3/4.5.2). The proposed change has no adverse affects on the injection capability of the HPCI system. Therefore, the safety function of the system is not degraded, and there is no reduction in the margin of safety as defined in the basis for the HPCI Technical Specifications.

Primary Containment and Reactor Building Safety-Related Systems, Structures, and Components Affected by LOCA/SRV Hydrodynamic Loads

Removal of the HPCI auto suction transfer on high suppression pool level does not affect the Technical Specification requirement to maintain suppression pool water level between 22 and 24 feet (Technical Specification 3.6.2.1). Therefore, the maximum containment pressure during the design-basis accident is unaffected by the proposed change, and there can be no reduction in the margin of safety as defined in the basis for Technical Specification

3.6.2.1. Furthermore, a detailed examination of the reactor and containment response under accident and transient conditions involving HPCI operation found no situations where the auto suction transfer was necessary to maintain LOCA and SRV loads within the design basis envelope. Therefore, from the standpoint of LOCA/SRV hydrodynamic loads, the proposed change does not reduce the margin of safety for any primary containment or reactor building structure, system, or component.

RCIC Turbine

The basis for Technical Specification 3.7.3 states that the RCIC system is provided to assure adequate core cooling in the event of a reactor isolation with loss of feedwater flow. The proposed change does not prohibit RCIC from performing this function, nor does it degrade in any way the core cooling capability of RCIC. Therefore, there is no reduction in the margin of safety as defined in the basis for Technical Specification 3.7.3.

Safety-Related Valves on Piping Connected to Suppression Pool

MOVs—The increase in suppression pool water level which can occur as a result of the proposed change does not reduce the margin of safety for safety-related valves on piping connected to the suppression pool. The pressure differential for any valve on piping connected to the suppression pool will increase by at most 0.86 psi. This change in differential pressure has negligible effect on valve operation.

Vacuum Breakers—The proposed change cannot reduce the margin of safety as discussed in the basis for Technical Specification 3.6.4 because the maximum level expected in a design-basis event is 26 feet which is well below the downcomer-vent vacuum breaker elevation of 42 feet.

SRVs/Tailpipes—There is no interaction between increased suppression pool level and SRV operation since the flow through the SRVs is choked and therefore decoupled from downstream conditions. Consequently, there is no reduction in the margin of safety as defined in the bases for Technical Specifications 3.4.2 (safety valve function) and 3.5.1.d (ADS function). Also, the increased suppression pool level does not lead to a reduction in the margin of safety for the SRV tailpipes because the tailpipes can operate safely with pool levels up to 35 feet. This is nine feet above the maximum suppression pool level that can occur in a design-basis accident with the proposed change. For beyond-design-basis events, SRV tailpipe integrity is protected by the EOP requirement to depressurize the reactor on the SRV Tailpipe Level Limit.[7]

HPCI Relay Panel 1C620(2C620) & 250 V DC Control Center 1D264(2D264)

As discussed previously, removal of the relay from 250 VDC Control Center 1D264 (2D264) and the replacement of the relay in the HPCI Relay Panel 1C620 (2C620) changes the load on the battery systems by a small amount. The change in battery load and change in line voltage drop are negligible and therefore they do not reduce the margin of safety for the panels or battery systems. In addition, seismic qualification of the panels is not adversely affected by this change so there is no reduction in the margin of safety for seismic events.

1. DBD041, Rev. 0, p. 1. [design basis document for RCIC system]

2. SSES DAR [design assessment report for suppression pool hydrodynamic loads], Section 9.4.1

3. Suppression pool level must be maintained less than 24 feet in accordance with Technical Specification 3.6.2.1.a.

4. GKR–03–001, ''NRC and Utility Notification of Closeout of GE PRC92–05, Potential Design Deficiency on HPCI,'' January 6, 1993 [GE letter to PP&L regarding closure of HPCI design issue].

5. This limit is defined in EO–100/200–103 [emergency operating procedure]

6. Bechtel Calculations PUP–15598–S2 & PUP–15598–S6, and PLE–15315 (March 2, 1992)

7. The limit is defined in EO–100/200–103 [emergency operating procedure]

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.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 7, 1996.

Description of amendment request: The amendments would modify the Susquehanna Steam Electric Station, Units 1 and 2, Technical Specifications by revising the trip setpoints and allowable values for the secondary containment isolation ''Refuel Floor High Exhaust Duct Radiation—High'' monitor, the ''Railroad Access Shaft Exhaust Duct Radiation—High'' monitor, and the ''Refuel Floor Wall Exhaust Duct Radiation—High'' monitor in Table 3.3.2–2. The change would enhance the operational efficiency of plant operations by eliminating compensatory measures which prevent spurious secondary containment isolations, and initiation of the standby gas treatment system (SGTS) and recirculation system during refueling activities. This change would also allow for the use of the hydrogen water chemistry system during operation.

Basis for proposed no significant hazards consideration determination: 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. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the trip setpoints and allowable values to the ''Refuel Floor High Exhaust Duct Radiation—High'' monitor, the ''Railroad Access Shaft Exhaust Duct Radiation—High'' monitor, and the ''Refuel Floor Wall Exhaust Duct Radiation—High'' monitor does not involve a significant increase in the probability or consequences of an accident previously evaluated. The design basis for the monitors is to monitor radiation in the unfiltered air from the Zone III exhaust system to provide signals which isolate the Zone III of the secondary containment on a high radiation condition, and to initiate SGTS and the Recirculation system to limit offsite doses to maintain regulatory requirements.

The original setpoints for these monitors were based upon normal radiological operating conditions and were set at a value to preclude spurious design actuations by these monitors during normal plant operations. However, the monitors are designed to detect radiation associated with certain postulated accident conditions. As required by the Technical specifications the monitors are operable when conditions exist that may result in fuel damage events, and therefore, will perform their design basis function. Consequently, an increase to the trip setpoints and allowable values is warranted since the existing setpoints, which are conservatively based on normal radiological operating conditions, are not related to the design basis of the monitors. Therefore, based upon the design basis of the monitors, an increase to the trip setpoints and allowable values will not result in a decrease of the safety function of the monitors but will make the trip setpoints and allowable values consistent with the design basis.

Based on the design basis of these monitors, revised analytical limits were derived reflecting the accident function of the monitors. The analytical limit calculations utilized FSAR realistic source terms, instead of the worst case source terms utilized for 10CFR [Part] 100 compliance. Use of the realistic source terms results in conservative analytical limits.

The ''Refuel Floor High Exhaust Duct Radiation—High'' monitor, and the ''Refuel Floor Wall Exhaust Duct Radiation—High'' [monitor] are required to be OPERABLE during CORE ALTERATIONS (except for single control rod movements unless performing TS 3.10.3), operations with the potential for draining the reactor vessel, and handling of irradiated fuel in the secondary containment. The ''Railroad Access Shaft Exhaust Duct Radiation—High'' monitor is required to be operable during handling of irradiated fuel. These Technical Specification

applicable operational conditions for the monitors are not affected since this proposed revision only revises the trip setpoints and allowable values to be consistent with the design bases of the monitors.

For the reasons stated above the revisions to the trip setpoints and allowable values to the ''Refuel Floor High Exhaust Duct Radiation—High'' monitor, the ''Railroad Access Shaft Exhaust Duct Radiation—High'' monitor, and the ''Refuel Floor Wall Exhaust Duct Radiation—High'' monitor in Technical Specification.

Table 3.3.2–2 can be implemented without a significant increase in the probability or consequence of an accident previously evaluated.

II. This proposal does not create the possibility of a new or different kind of accident previously evaluated.

The proposed change to the trip setpoints and allowable values for the ''Refuel Floor High Exhaust Duct Radiation—High'' monitor, the ''Railroad Access Shaft Exhaust Duct Radiation—High'' monitor, and the ''Refuel Floor Wall Exhaust Duct Radiation—High'' monitor does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The monitors are designed to limit the release of airborne radioactivity in the secondary containment Zone III exhaust system by isolating Zone III, initiating [the] SGTS and initiating the Recirculation System on high radiation resulting from fuel handling accidents. Therefore, the design basis for these monitors is to monitor radiation in the unfiltered air from the Zone III exhaust system, and provide signals to limit offsite doses to maintain regulatory requirements. Zone III includes the Refueling Floor and can include the Railroad Access Shaft during certain alignments. These radiation monitors are not provided for occupational protection associated with operational radiation doses. The proposed revision does not affect the design basis of the monitors nor the kind of accident associated with the basis; therefore, no potential to create a new or different accident exists.

For the reasons stated above the revisions to the trip setpoints and allowable values to the ''Refuel Floor High Exhaust Duct Radiation—High'' monitor, the ''Railroad Access Shaft Exhaust Duct Radiation—High'' monitor, and the ''Refuel Floor Wall Exhaust Duct Radiation—High'' monitor in Technical Specification Table 3.3.2–2 can be implemented without creating the possibility of a new or different kind of accident from any accident previously evaluated.

III. This proposal does not involve a significant reduction on a margin of safety.

The proposed change to the trip setpoints and allowable values for the ''Refuel Floor High Exhaust Duct Radiation—High'' monitor, the ''Railroad Access Shaft Exhaust Duct Radiation—High'' monitor, and the ''Refuel Floor Wall Exhaust Duct Radiation—High'' monitor does not involve a significant reduction in a margin of safety.

The monitors are designed to limit the release of airborne radioactivity in the secondary containment Zone III exhaust system by isolating Zone III, initiating [the] SGTS and initiating the Recirculation System on high radiation resulting from fuel handling accidents. Therefore, the design basis for these monitors is to monitor radiation in the unfiltered air from the Zone III exhaust system, and provide signals to limit offsite doses to maintain regulatory requirements. Zone III includes the Refueling Floor and can include the Railroad Access Shaft during certain alignments. These radiation monitors are not provided for occupational protection associated with operational radiation doses. However, the original setpoints for these monitors were conservatively based upon normal radiological operating conditions and were set at a value to preclude spurious design actuation by these monitors during normal plant operations. The calculations performed to support the trip setpoint and allowable value revisions concluded that the change will maintain offsite doses within the 10CFR100 limits. The ''Refuel Floor High Exhaust Duct Radiation—High'' monitor, and the ''Refuel Floor Wall Exhaust Duct Radiation—High'' are required to be OPERABLE during CORE ALTERATIONS (except for single control rod movements unless performing TS 3.10.3), operations with the potential for draining the reactor vessel, and handling of irradiated fuel in the secondary containment. The ''Railroad Access Shaft Exhaust Duct Radiation—High'' monitor is required to be operable during handling of irradiated fuel. These Technical Specification applicable operational conditions for the monitors are not affected since the proposed revision only revises the trip setpoints and allowable values to be consistent with the design bases of the monitors.

The proposed revisions to the trip setpoints and allowable values, in addition to being based on the appropriate accident conditions, were also developed utilizing standard setpoint change methodologies that consider instrument and calibration accuracies and instrument drift tolerances. This provides added conservatism to assure that the revised trip setpoints and allowable values are not exceeded.

For the reasons stated above the revisions to the trip setpoints and allowable values to the ''Refuel Floor High Exhaust Duct Radiation—High'' monitor, the ''Railroad Access Shaft Exhaust Duct Radiation—High'' monitor, and the ''Refuel Floor Wall Exhaust Duct Radiation—High'' monitor in Technical Specification Table 3.3.2–2 can be implemented without involving 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 amendment request involves no significant hazards consideration.

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Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of amendment request: November 25, 1996.

Description of amendment request: The proposed Technical Specifications (TS) changes would revise the wording in TS Section 4.8.1.1.2.e.2 and the associated TS Bases Section 3/4.8 to remove the specific reference to the Residual Heat Removal pump motor and its corresponding kW rating value, and replace it with wording consistent with that specified in the Improved TS (i.e., NUREG–1433, Revision 1, ''Standard Technical Specifications General Electric Plants,'' dated April 1995).

Basis for proposed no significant hazards consideration determination: 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 Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not make any physical alterations or modifications to the plant systems or equipment. The proposed changes do not adversely impact the operation of any plant equipment. The EDGs will continue to function as designed to ensure that the necessary electrical power is provided to essential plant equipment to mitigate the consequences of an accident, e.g., Loss-of-Offsite-Power (LOOP) and Loss-of-Coolant Accident LOCA) coincident with a LOOP (LOCA/LOOP). The proposed TS changes do not impact the performance testing requirements associated with the EDGs. The accident mitigating capabilities of the diesel generators and emergency loads will remain the same.

The proposed TS changes are consistent with the guidance stipulated in NUREG–1433, Revision [1], ''Standard Technical Specification General Electric Plants,'' regarding single load rejection testing of the EDGs. Specifically, the proposed changes involve revising the wording in TS Surveillance Requirement (SR) 4.8.1.1.2.e.2 to remove the specific reference to the Residual Heat Removal (RHR) pump motor and associated kW loading value (992 kW), and replace it with wording indicating that the EDGs must be capable of rejecting the single largest post-accident load, which is consistent with NUREG–1433, Revision 1, guidance. The proposed changes will also provide additional flexibility for future plant maintenance activities.

Each EDG will continue to be tested by rejecting a load of greater than or equal to that of its single largest post-accident load while maintaining voltage and frequency

within the current specified parameters. The RHR pump motors are currently used in performing the EDG single load rejection testing. The RHR pump motors will continued [sic] [continue] to be used in performing the surveillance testing since they are the single largest post-accident electrical load. The consequences of a malfunction of equipment are not affected. Failure of a EDG or its safety-related loads is bounded by the loss of a Class 1E electrical power division which has been previously evaluated as discussed in LGS Updated Final Safety Analysis Report (UFSAR) Sections 8.1.5.2.e and 8.3.1.1.3.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not make any physical alterations or modifications to the plant systems or equipment. The proposed changes do not adversely impact the operation of any plant equipment. The EDGs will continue to function as designed to provide essential electrical power to mitigate the consequences of an accident. The proposed TS changes are consistent with the guidance stipulated in NUREG–1433, Revision 1, regarding single load rejection testing of the EDGs. The proposed changes do not introduce any new accidents or transients. The proposed TS changes will provide additional flexibility for future maintenance activities. The proposed changes do not alter any EDG testing requirements or frequencies. The RHR pump motors are currently used in performing the EDG single load rejection testing. The RHR pump motors will continue to be used in performing the surveillance testing since they are the single largest post-accident electrical load. The operation of the EDGs and their corresponding safety-related electrical loads remain unchanged as a result of the proposed TS changes.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes do not involve any physical changes to plant systems or equipment. The proposed TS changes are consistent with the guidance stipulated in NUREG–1433, Revision 1, ''Standard Technical Specification General Electric Plants,'' regarding single load rejection testing of the EDGs. The proposed TS changes will provide additional flexibility for future plant maintenance activities. The EDGs will continue to function as designed to provide essential electrical power to mitigate the consequences of an accident. The operation of the EDGs and their corresponding safety-related electrical loads remain unchanged as a result of the proposed TS changes.

Therefore, the proposed TS changes do 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 amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: John F. Stolz.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: November 15, 1996.

Description of amendments request: The amendments would eliminate the containment systems Technical Specification 3.6.2.2. ''Spray Additive System.'' The specification would be replaced with a new emergency core cooling system Technical Specification 3.5.6 ''ECCS Recirculation Fluid pH Control System.''

Basis for proposed no significant hazards consideration determination: 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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change involves replacement of concentrated NaOH injected via the containment spray system with trisodium phosphate (TSP) stored in the containment and dissolved in the sump recirculation solution to maintain acceptable post accident spray/recirculation solution chemistry. Deletion of the concentrated NaOH will eliminate a personnel hazard. The pH control system functions in response to an accident and does not involve or have any effect on any initiating event for any accident previously evaluated. Operation under the proposed amendments will continue to ensure that iodine potentially released post-LOCA [loss-of-coolant accident] is retained in the sump solution, and resultant offsite and control room thyroid doses are within the limits of 10 CFR [Part] 100 and 10 CFR [Part] 50, Appendix A, General Design Criterion [GDC] 19, respectively.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The deleted equipment is isolated from the remaining equipment by cut-and-capped piping, determinated and/or spared cables; and interfaces are analyzed to ensure the remaining required equipment meets applicable original design requirements. The new equipment (TSP and baskets) is a passive pH control system and is supported and analyzed to ensure there are no adverse interfaces (e.g., pipe break, jet impingement, seismic) with existing equipment, system, or structures.

3. The proposed change does not involve a significant reduction in a margin of safety. The slight change in recirculation solution pH maintains adequate protection against chloride and caustic induced stress corrosion cracking on mechanical systems and components, and maintains the capability of the solution to retain iodine. It does not result in a change to the hydrogen generation analysis for containment. The increased mass inside containment will have no significant impact on post-accident flood levels, recirculation solution boron concentration, or peak clad temperatures. No other operating parameters for systems, structures, or components assumed to operate in the safety analysis are changed. The offsite and control room doses meet the limits of 10 CFR [Part] 100 and GDC 19, respectively. Because the trisodium phosphate is nonvolatile and the baskets are protected with solid covers and are located slightly above the floor in the containment where access is strictly controlled, a surveillance interval of once per refueling outage provides assurance that the TSP will be available.

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.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Project Director: Herbert N. Berkow.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued

involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 3, 1996, as supplemented October 23, 1996.

Description of amendment request: The proposed amendment would clarify a restriction on shutdown margin monitor operability while changing modes so that it only limits reactivity changes caused by boron dilution and rod withdrawal.

Date of publication of individual notice in Federal Register: June 20, 1996 (61 FR 31559).

Expiration date of individual notice: July 22, 1996.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are 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 rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: October 4, 1996 and supplemented on November 6, 1996.

Brief description of amendments: The amendments add a Mode of Applicability to Technical Specification 3.2.3.D, Inoperable Rod Position Indicator Channels.

Date of issuance: November 25, 1996.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 176 and 163.

Facility Operating License Nos. DPR–39 and DPR–48: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 17, 1996 (61 FR 54240).

The November 6, 1996, submittal provided additional clarifying information that did not affect the Commission's initial proposed finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: June 21, 1996.

Brief description of amendments: The amendments revise Technical Specification (TS) Section 3/4.9.6, ''Manipulator Crane,'' to make the wording consistent with the TS Bases description and consistent with the design of the load handling equipment.

Date of issuance: November 25, 1996.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 156 and 148.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 23, 1996 (61 FR 55031) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: September 17, 1996 (TSC 96–01) as supplemented October 23, 1996.

Brief description of amendments: The amendments lower the maximum allowable reactor building pressure, lower the actuation setpoint for actuation of the reactor building spray system, and modify the associated TS Bases requirements.

Date of Issuance: November 25, 1996.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 219, 219, 216.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 23, 1996 (61 FR 55031). The October 23, 1996, letter provided clarifying information that did not change the scope of the September 17, 1996, application and the initial proposed no signficant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: July 31, 1996, as supplemented by letters of September 5, October 22, and November 15, 20, and 21, 1996, which supersede the application submitted in the letter of May 9, 1996.

Brief description of amendment: The amendment (1) increased the safety limit minimum critical power ratio (MCPR) for two loop operation and single loop operation to 1.12 and 1.14, respectively, and (2) added two General Electric topical reports to the list of documents describing the analytical methods used to determine the core operating limits. The changes are to Section 2.1.1, Reactor Core Safety Limits, and Section 5.6.5, Core Operating Limits Report (COLR), respectively, of the Technical Specifications. This amendment would go into effect in Operating Cycle 9, at the end of the current Refueling Outage 8, and the plant will have a mixed core of Siemens Power Corporation (SPS) 9×9−5 and General Electric (GE) GE11 reload fuel. The licensee also changed the Bases of the Technical Specifications associated with the above amendment.

Date of issuance: November 21, 1996.

Effective date: November 21, 1996.

Amendment No: 131.

Facility Operating License No. NPF–29: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: September 25, 1996.The October 22, and November 15, 20, and 21, 1996, submittals provide clarifying information that did not change the initial determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: April 15, 1996 (TSCR No. 244).

Brief description of amendment: The amendment revises Specification 5.3.1.B to allow the shield plug and the associated lifting hardware to be moved over irradiated fuel assemblies that are in a dry shielded canister within the transfer cask in the cask drop protection system.

Date of Issuance: November 7, 1996.

Effective date: November 7, 1996, to be implemented within 30 days of issuance.

Amendment No.: 187.

Facility Operating License No. DPR–16: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20849). The Commission's related evaluation of this amendment and final determination of no significant hazards consideration addressing comments received on the proposed no significant hazards consideration determination are contained in a Safety Evaluation dated November 7, 1996.

No significant hazards consideration comments received: Yes.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: February 22, 1996, and as supplemented by letters dated July 24, October 4, November 19 and November 25, 1996.

Brief description of amendment: The amendment changes Clinton Power Station Technical Specification (TS) 3.3.8.1, ''Loss of Power Instrumentation,'' and TS 3.8.1, ''AC Sources-Operating,'' by revising the setpoint for the degraded voltage protection instrumentation and modifying or deleting other Loss of Power Instrumentation TS requirements. In addition, changes were also made to the minimum required diesel generator voltage specified for certain diesel generator surveillances.

Date of issuance: December 4, 1996.

Effective date: December 4, 1996.

Amendment No.: 110.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 24, 1996 (61 FR 18168).The letters of July 24, October 4, November 19 and November 25, 1996, provided clarifying information and did not represent significant changes from the original Federal Register notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: October 11, 1996.

Brief description of amendments: These amendments revise Technical Specification (TS) 3.9.6, ''Refueling Water Level,'' for San Onofre Nuclear Generating Station (SONGS), Units 2 and 3. The proposed change is required to restore certain provisions of the SONGS Units 2 and 3 operating practice that were not incorporated during the conversion to the improved TS (Amendment Nos. 127 and 116, dated February 9, 1996).

Date of issuance: December 3, 1996.

Effective date: December 3, 1996, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2—134; Unit 3—123.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 31, 1996 (61 FR 56251) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 3, 1996.

No significant hazards consideration comments received: No.

Temporary Local Public Document Room location: Science Library, University of California, P.O. Box 19557, Irvine, California 92713.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 24, 1995, as supplemented by letter dated July 26, 1996.

Brief description of amendment: The amendment revised Technical Specification (TS) Surveillance Requirement 4.5.1.1.a.1 to base accumulator operability on actual parameters (i.e., borated water volume and nitrogen cover-pressure in the tanks) vs. the absence of alarms.

Date of issuance: November 22, 1996.

Effective date: November 22, 1996, to be implemented within 30 days of issuance.

Amendment No.: 103.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 12, 1995 (60 FR 18632) The July 26, 1996, letter provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1996.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 11th day of December 1996.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–31944 Filed 12–17–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. A97–6; Order No. 1144]

Plevna, MO 63464: (William Ahern, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued December 13, 1996.

Docket Number: A97–6.

Name of Affected Post Office: Plevna, Missouri 63464.

Name(s) of Petitioner(s): William Ahern, *et al.*

Type of Determination: Closing.

Date of Filing of Appeal Papers: December 10, 1996.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by December 26, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

December 10, 1996, Filing of Appeal letter
December 13, 1996, Commission Notice and Order of Filing of Appeal
January 3, 1997, Last day of filing of petitions to intervene [see 39 C.F.R. § 3001.111(b)]
January 14, 1997, Petitioners— Participant Statement or Initial Brief [see 39 C.F.R. § 3001.115(a) and (b)]
February 3, 1997, Postal Service's Answering Brief [see 39 C.F.R. § 3001.115(c)]
February 18, 1997, Petitioners' Reply Brief should Petitioner choose to file one [see 39 C.F.R. § 3001.115(d)]
February 25, 1997, Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. § 3001.116]
April 9, 1997, Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 96–32097 Filed 12–17–96; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38041; File No. SR–Phlx–96–11]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to the Exchange's Calculation of Settlement Values for Cash/Spot Foreign Currency Option Contracts (''3–D Options'')

December 11, 1996.

On April 30, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the Exchange to calculate settlement values for the cash/spot Dollar Denominated Delivery foreign currency option contracts (''3–D options'') and to limit the Exchange's liability in connection with the calculation and dissemination of these settlement values. On May 20, 1996, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, along with Amendment No. 1, was published for comment in the Federal Register on June 25, 1996.[4] On August 22, 1996, the Phlx clarified that it would not rely upon the proposed limitation of liability clause to limit the Exchange's liability for intentional misconduct or for any violation of the federal securities laws.[5] No comments were received on the proposal. This order approves the proposal, as amended by Amendment No. 2.

On March 8, 1994, the Commission approved trading for 3–D Foreign Currency Options on the Deutsche Mark.[6] Currently, the closing settlement value for 3–D options is calculated by a market information vendor acting as the Exchange's designated agent. The market information vendor will collect the bid and offer quotations for the current foreign exchange spot price from quotations submitted by at least fifteen interbank foreign exchange market participants, which the designated agent will select randomly from a list of twenty-five active interbank foreign exchange market participants. After discarding the five highest and the five lowest bids and offers, the market information vendor averages the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Murray L. Ross, Vice President and Secretary, Phlx, to Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, dated May 17, 1996 (''Amendment No. 1''). The changes contained in this letter were superseded by Amendment No. 2. *See infra* note 5.

[4] Securities Exchange Act Release No. 37323 (June 18, 1996) 61 FR 32880.

[5] *See* letter from Murray L. Ross, Vice President and Secretary, Phlx, to Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, dated August 21, 1996 (''Amendment No. 2'') (superseding Amendment No. 1).

[6] Securities Exchange Act Release No. 33732 (Mar. 8, 1994), 59 FR 12023 (approving File No. SR–Phlx–93–10). Although the Commission has approved trading for 3–D Foreign Currency Options on the Japanese Yen, trading in these securities on the Exchange has not yet begun. Securities Exchange Act Release No. 36505 (Nov. 22, 1995), 60 FR 61277 (approving File No. SR–Phlx–95–42).

remaining ten bids and offers to arrive at a closing settlement price.[7]

The Phlx proposes to amend Phlx Rule 1057 to permit the Exchange to choose whether it will calculate the settlement value for 3–D options itself or employ a designated market information vendor as an agent of the Exchange for that purpose.[8] The Exchange will continue to use the same methodology for calculating the settlement value for 3–D options as described in Phlx Rule 1057.

The Phlx believes that calculating its own settlement value for 3–D options will enable the Exchange to exert control over the assembly of this value. The Exchange also believes that the proposed rule change will reduce the necessary response time in the event there is a problem in the calculation or dissemination of the 3–D options settlement value.

The Exchange also proposes to amend Phlx Rule 1057 by including a ''limitation of liability'' clause that limits the Exchange's liability in connection with the calculation and dissemination of the 3–D settlement value. The Exchange believes the limitation of liability clause will provide added protection to the Exchange and alleviate the threat of potential liability in calculating the 3–D settlement value. In this regard, the Phlx acknowledges that the proposed limitation of liability clause cannot be relied upon by the Exchange to limit its liability for intentional misconduct or for any violation of the federal securities laws.[9]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[10] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

The Commission agrees with the Phlx's assertion that, by calculating its own settlement value for 3–D options, investors should be benefitted because the response time needed in the event there is a problem in the calculation or dissemination of the 3–D options settlement values should be reduced. In any case, the same methodology for calculating the settlement values, as set forth in Phlx Rule 1057, will be used, irrespective of whether the Phlx or a market information vendor is performing this function.

With regard to the limitation of liability clause, the Commission finds that the proposed language will provide the Phlx with protection that is substantively similar to protection already afforded other self-regulatory organizations.[12] Additionally, because the Phlx represents that the proposed rule change cannot be used to limit its liability for intentional misconduct or for any violations of the federal securities laws, the Commission believes that the proposal will protect investors and the public interest, while also serving to facilitate transactions in securities. Specifically, entities, such as the Phlx, may be encouraged to calculate and disseminate settlement values.[13] Therefore, these derivative products, which are found to provide hedging or other economic functions, should remain available to investors.

Finally, although the current language in the ''Characteristics and Risks of Standardized Options'' Options Disclosure Document (''ODD'')[14] adequately discloses a reporting authority's limited liability regarding the dissemination of index values, the Commission believes it would be useful if this language was more prominent in the ODD.[15] Therefore, in connection with the approval of this proposal, The Options Clearing Corporation (''OCC'') has indicated that it will address this issue the next time it conducts a general revision of the ODD.[16]

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register because this amendment merely conforms the proposal to similar rules of other self-regulatory organizations.[17] Moreover, the Commission notes that prior proposals by other SROs to limit their liability in connection with the administration of new proprietary indexes and products were published by the Commission for the full statutory comment period without any comments being received.[18] Therefore, the Commission believes that granting accelerated approval to Amendment No. 2 is appropriate and consistent with Section 6(b)(5) and Section 19(b)(2) of the Act.[19]

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–11 and should be submitted by [insert date 21 days from date of publication].

[7] The Exchange currently has a proposal pending at the Commission that would modify this settlement value formula. *See* Securities Exchange Act Release No. 38017 (Dec. 4, 1996) (publishing notice of File No. SR–Phlx–96–44).

[8] The Exchange does not intend to redesignate the reporting authority on a regular or frequent basis. Instead, the Exchange will select a reporting authority with the intention, to the extent possible, that the selection will be lasting. Telephone conversation between Nandita Yagnik, New Products Development, Phlx, and Anthony P. Pecora, Attorney, Division of Market Regulation, SEC (Dec. 4, 1996).

[9] *See* Amendment No. 2, *supra* note 5.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* American Stock Exchange Rules 902C and 1003; Chicago Board Options Exchange Rule 24.14; New York Stock Exchange Rule 702(b).

[13] *See,* Securities Exchange Act Release No. 34125 (May 27, 1994), 59 FR 29307 (approving File No. SR–Amex–93–41).

[14] Form S–20 and Rule 9b–1 establish a disclosure framework specifically tailored to the informational needs of investors in standardized options that are traded on national securities exchanges and cleared through clearing agencies registered as such under the Act. Under this options disclosure system, the exchange(s) on which standardized options are listed and traded must prepare an ODD that, among other things, identifies the issuer and describes the uses, mechanics, and risks of options trading and other matters in language that easily can be understood by the general investing public. Broker-dealers must provide a copy of the ODD to each customer at or prior to the approval of the customer's account for trading in any standardized option. Any amendment to the ODD must be distributed to each customer whose account is approved for trading the options class for which the ODD relates. *See* 17 CFR 240.9b–1; Securities Exchange Release No. 31910 (Feb. 23, 1993), 58 FR 12280 (approving File No. SR–ODD–93–1).

[15] Currently, this information appears on pages twenty-six and seventy-six of the ODD.

[16] *See* letter from James C. Yong, First Vice President and General Counsel, OCC, to Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, dated November 6, 1996.

[17] *See supra* footnote 12 (listing comparable rules).

[18] *See, e.g.,* Securities Exchange Act Release No. 34125 (May 27, 1994), 59 FR 29307 (approving File No. SR–Amex–93–41).

[19] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Phlx–96–11), as amended by Amendment No. 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32081 Filed 12–17–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2894]

North Carolina; Declaration of Disaster Loan Area (Amendment #5)

In accordance with a notice from the Federal Emergency Management Agency, dated December 2, 1996, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to January 4, 1997.

All other information remains the same, i.e., the termination date for filing applications for loans for economic injury is June 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 6, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–32051 Filed 12–17–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2480]

Bureau of Oceans and International Environmental and Scientific Affairs; Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Notice.

SUMMARY: At its Fifteenth Meeting in Hobart, Tasmania, October 21 to November 1, 1996, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, define the reporting requirements, and specify measures that must be taken to minimize the incidental taking of non-target species. This notice lists the conservation measures adopted at the Fifteenth meeting of CCAMLR and the conservation measures remaining in force from previous years which are not otherwise addressed by U.S. regulations (see **SUPPLEMENTARY INFORMATION**). Therefore, this notice together with the U.S. regulations referenced under **SUPPLEMENTARY INFORMATION** provide a comprehensive register of all U.S. obligations under CCAMLR.

DATE: Persons wishing to comment on the measures or desiring more information should submit written comments on or before January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Erica Keen, Division of Polar Affairs, Office of Oceans Affairs (OES/OA/PA), Room 5805, Department of State, Washington, DC 20520, (202) 647–3262.

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see Federal Register Vol. 61, No. 130, Friday July 5, 1996 15 CFR part 902, Subpart G—Antarctic Marine Living Resources, and; CFR Chapter III—International Fishing and Related Activities, part 300—International Fisheries Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G—Antarctic Marine Living Resources for other regulatory measures related to conservation and management in the CCAMLR Convention area. These regulations give effect to CCAMLR Conservation Measures which are not expected to change from year to year and describe the process for regulating U.S. fishing in the Convention area. The regulations include sections on: Purpose and scope; Definitions; Relationship to other treaties, conventions, laws and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific research; Initiating a new fishery; Exploratory fisheries; Reporting and record keeping requirements; Vessel and gear identification; Gear disposal; Mesh size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

Conservation Measures Adopted at the Fifteenth Meeting of the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR XV)

At its Fifteenth Annual Meeting in Hobart, Tasmania, October 21 to November 1, 1996, the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) revised several of its previously adopted Conservation Measures and adopted the additional measures, as follows:

Conservation Measures 29/XV[1, 2]

Minimization of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water[3]. Only thawed bait shall be used.

2. Longlines shall be set at night only (i.e. during the hours of darkness between the times of nautical twilight[4, 5]). During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

3. The dumping of offal shall be avoided as far as possible while longlines are being set or hauled; if discharge of offal is unavoidable, this discharge shall take place on the opposite side of the vessel to that where longlines are set or hauled.

4. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.

5. A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed. Specification of the streamer line and its method of deployment is given in the Appendix to this Measure. Details of the construction relating to the number of placement of swivels may be varied so long as the effective sea surface covered by the streamers is no less than that covered by the currently

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

specified design. Details of the device dragged in the water in order to create tension in the line may also be varied.

6. Other variations in the design of streamer lines may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that all other elements of this Conservation measure are complied with.[6]

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edwards Islands.

[3] For vessels using the Spanish method of longline fishing, weights should be released before line tension occurs; wherever possible weights of at least 6 kg mass should be used, spaced at 20 m intervals.

[4] The exact time of nautical twilight are set forth in the Nautical Almanac tables for the relevant latitude, local time and date. All times whether for ship operations or observer reporting shall be referenced to GMT.

[5] Wherever possible, setting of lines should be completed at least three hours before sunrise (to reduce loss of bait to/catches of white-chinned petrels).

[6] The streamer lines under test should be constructed and operated taking full account of the principles set out in WG–IMALF–94/19 (available from the CCAMLR Secretariat); testing should be carried out independently of actual commercial fishing and in a manner consistent with the spirit of Conservation Measure 65/XII.

Appendix to Conservation Measure 29/XV

1. The Streamer line is to be suspended at the stern from a point approximately 4.5 m above the water and such that the line is directly above the point where the baits hit the water.

2. The streamer line is to be approximately 3 mm diameter, have a minimum length of 150 m and have a device at the end to create tension so that the main line streams directly behind the ship even in cross winds.

3. At 5 m intervals commencing from the point of attachment to the ship five branch streamers each comprising two strands of approximately 3 mm diameter cord should be attached. The length of the streamer should range between approximately 3.5 m nearest the ship to approximately 1.25 m for the fifth streamer. When the streamer line is deployed the branch streamers should reach the sea surface and periodically dip into it as the ship heaves. Swivels should be placed in the streamer line at the towing point, before and after the point of attachment of each branch streamer and immediately before any weight placed on the end of the streamer line. Each branch streamer should also have a swivel at its attachment to the streamer line.

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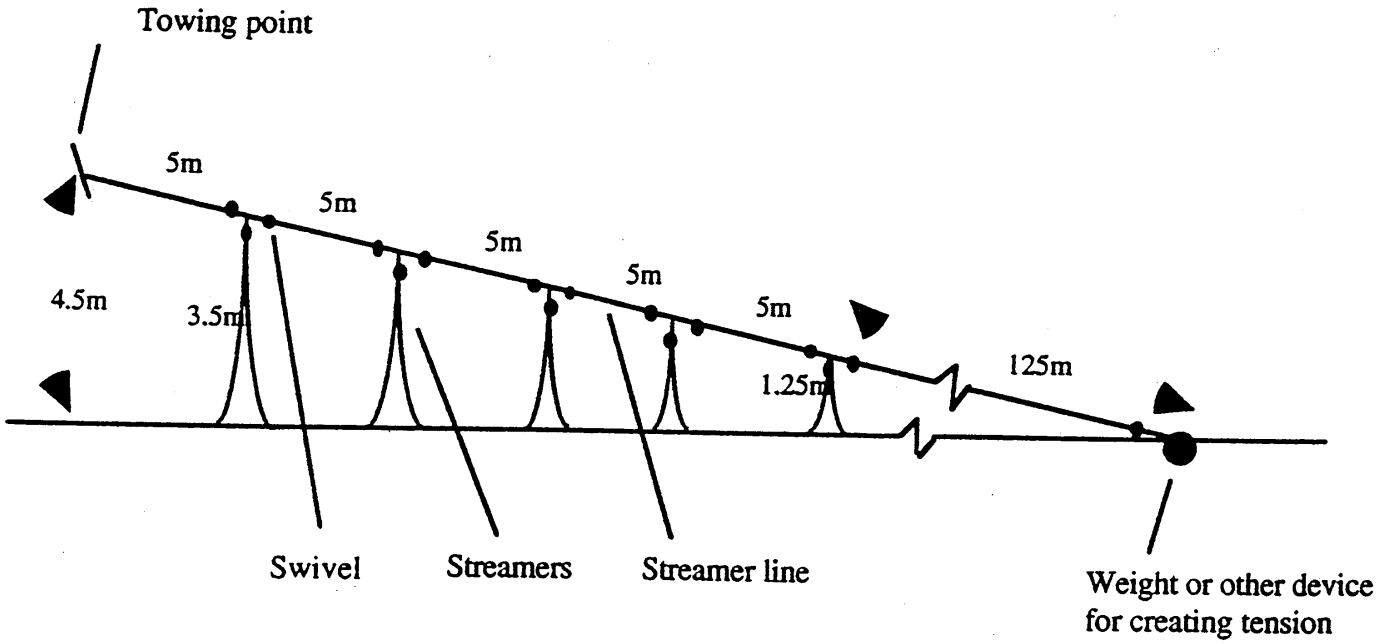

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Conservation Measure 63/XV

Regulation of the Use and Disposal of Plastic Packaging Bands on Fishing Vessels.

The Commission

Recollecting that for many years it has received evidence from the Scientific Committee that substantial numbers of Antarctic fur seals have been entangled and killed in plastic packaging bands in the Convention Area.

Noting that, despite the recommendation of CCAMLR and the provisions of the marpol Convention and its Annexes which prohibit the jettisoning of all plastics at sea, substantial entanglement of fur seals is still continuing.

Recognizing that the bait boxes used on fishing vessels in particular and other packages in general need not be secured by plastic packaging bands because suitable alternatives exist.

Agrees to adopt the following Conservation Measure, to reduce the incidental mortality of Antarctic fur seals due to entanglement, in accordance with Article IX of the Convention.

1. The use of fishing vessels of plastic packaging bands to secure bait boxes shall be prohibited.

2. The use of other plastic packaging bands for other purposes on fishing vessels which do not use on-board incinerators (closed systems) shall be prohibited.

e. Any packaging bands, once removed from packages, shall be cut, so that they do not form a continuous loop and at the earliest opportunity burned in the on-board incinerator.

4. Any plastic residue shall be stored on board the vessel until reaching port and in no case discarded at sea.

Conservation Measure 90/XV

Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 for the Seasons 1996/97 and 1997/98

The following measures apply to all crab fishing within Statistical Subarea 48.3 for the 1996/97 and 1997/98 fishing seasons. Every vessel participating in the crab fishery in Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. The experimental harvest regime shall consist of at least two phases. Each vessel participating in the fishery shall complete all of the phases. Phase 1 shall be conducted during the first season that a vessel participates in the experimental harvest regime. Phase 2, and any additional phases, shall be completed in the next season of fishing.

2. Vessels shall conduct Phase 1 of the experimental harvest regime at the start of their first season participation in the crab fishery. For the purposes of Phase 1, the following conditions shall apply:

(i) Phase 1 shall be defined as a vessel's first 200,000 pot hours of effort at the start of its first fishing season;

(ii) Every vessel conducting Phase 1 shall expend its first 200,000 pot hours of effort within a total area delineated by twelve blocks of 0.5; latitude by 1.0; longitude. For the purposes of this Conservation Measure, these blocks shall be numbered A to L. In Annex 90/A, the blocks are illustrated (Figure 1), and the geographic position is denoted by the coordinates of the northeast corner of the block. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(iii) Vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing Phase 1;

(iv) During Phase 1, vessels shall not expend more than 30,000 pot hours in any single block of 0.5° latitude by 1.0° longitude.

(v) If a vessel returns to port before it has expended 200,000 pot hours in Phase 1, the remaining pot hours shall be expended before it can be considered that the vessel has completed Phase 1; and

(vi) After completing 200,000 pot hours of experimental fishing, it shall be considered that vessels have completed Phase 1 and shall commence fishing in a normal fashion.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 104/XV.

4. For the purposes of implementing normal fishing operations after Phase 1 of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

5. Vessels shall conduct Phase 2, and any additional phases, of the experimental harvest regime during their second season of participation in the crab fishery. If any vessel initiates Phase 1 of the experimental harvest regime during the 1996/97 or 1997/98 fishing seasons, the Scientific Committee, and its Working Group on Fish Stock Assessment, shall advise the Commission on an appropriate experimental harvest strategy, Phase 2, for the following fishing season. This advice shall include provisions for:

(i) Requiring each vessel to expend approximately one month of experimental fishing effort during its second season of participation in the experimental harvest regime; and

(ii) A data collection and submission policy appropriate to the experimental fishing strategy that is being recommended.

6. Data collected during the experimental harvest regime in both Phase 1 and Phase 2 up to 30 June in any split-year shall be submitted to CCAMLR by 31 August of the following split-year.

7. Vessels that complete all phases of the experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 104/XV.

8. Fishing vessels shall participate in the experimental harvest regime independently (e.g. vessels may not cooperate to complete phases of the experiment).

9. Crabs captured during the experimental harvest regime shall be considered part of the prevailing TAC for the current fishing season (e.g. for 1996/97, experimental catches shall be considered part of the 1,600-ton TAC outlined in Conservation Measure 104/XV).

10. All vessels participating in the experimental harvest regime shall carry at least one scientific observer onboard during all fishing activities.

11. The experimental harvest regime shall be instituted for a period of two split-years (1996/97 and 1997/98), and the details of the regime may be revised by the Commission during this period of time. Fishing vessels that begin experimental fishing in the 1997/98 season must complete the regime during the 1998/00 season.

Annex 90/A,—Locations of Fishing Areas for the Experimental Harvest Regime of the Exploratory Crab Fishery

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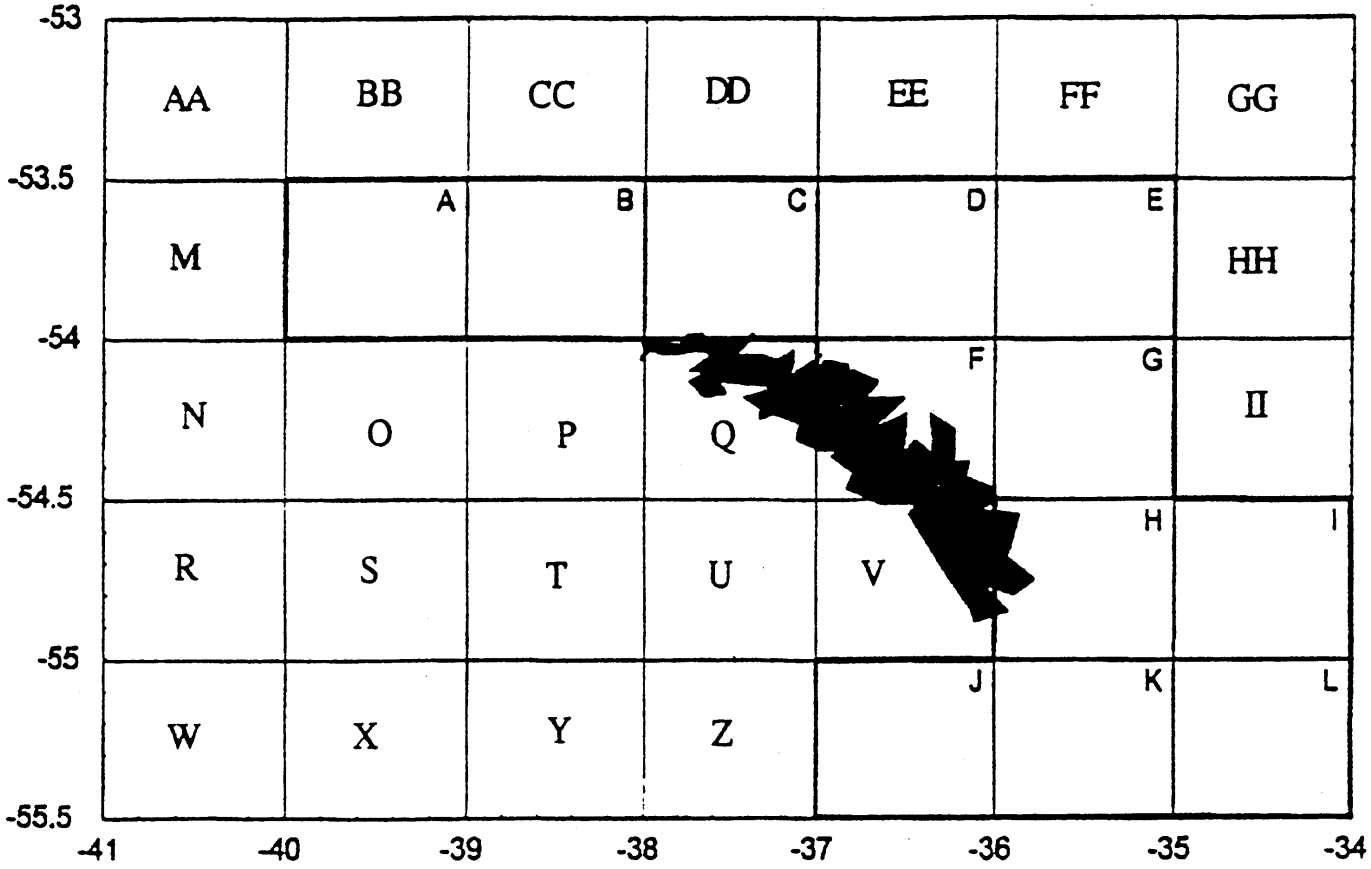

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Figure 1: Operations area for Phase 1 of the experimental harvest regime for the crab fishery in Subarea 48.3.

Conservation Measure 99/XV

New Fishery for *Martialia hyadesi* in Statistical Subarea 48.3 in the 1996/97 Season

The Commission

Welcoming the notification of the Republic of Korea and the UK of their intention to conduct a new fishery in Statistical Subarea 48.3 for *Martialia hyadesi* in the 1996/97 season, adopts the following Conservation Measure in accordance with Conservation Measure 31/x:

1. Fishing for *Martialia hyadesi* in Statistical Subarea 48.3 shall be limited to the new fishery by the Republic of Korea and the UK. The catch shall be limited to 2,500 tons.

2. For the purposes of this new fishery, the fishing season is defined as the period between November 2, 1996 and the end of the Commission meeting in 1997.

3. For the purposes of implementing this Conservation Measure:

(i) The Ten-day Catch and Effort Reporting System, as set out in Conservation Measure 61/XII shall apply;

(ii) The data required to complete the CCAMLR standard fine-scale catch and effort data form for squid jig fisheries (Form C3, latest version) shall be reported from each vessel. These data shall include numbers of seabirds and marine mammals of each species caught and released or killed. These data shall be reported to CCAMLR by August 31, 1997 for catches taken prior to July 31, 1997; and

(iii) Data on catches taken between July 31, 1997 and August 31, 1997 shall be reported to CCAMLR by September 30, 1997 so that the data will be available to the 1997 meeting of the Working Group on Fish Stock Assessment.

4. Each vessel participating in the new fishery for *Martialia hyadesi* during the 1996/97 season shall have a scientific observer on board, if possible appointed according to the CCAMLR Scheme of International Scientific Observation.

Conservation Measure 100/XV

Prohibition of Directed Fishery on *Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichtys georgianus, Lepidonotothen squamifrons* and *Patagonotothen guntheri* in Statistical Subarea 48.3 for the 1996/97 Season.

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

Directed fishing on *Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Lepidonotothen squamifrons* and *Patagonotothen guntheri* in Statistical Subarea 48.3 is prohibited in the 1996/97 season, defined as the period from November 2, 1996 to the end of the Commission meeting in 1997.

Conservation Measure 101/XV

Catch Limit on *Dissostichus eleginoides* in Statistical Subarea 48.4 for the 1996/97 Season.

1. Statistical Subarea 48.4 in the 1996/97 season shall be limited to 28 tons.

2. The total catch of *Dissostichus eleginoides* for the purposes of the Fishery for *Dissostichus eleginoides* in Statistical Subarea 48.4, the 1996/97 fishing season is defined as the period from March 1 to August 31, 1997, or until the TAC for *Dissostichus eleginoides* in Subarea 48.4 is reached, or until the TAC for *Dissostichus eleginoides* in Subarea 48.3, as specified

in Conservation Measure 102/XV is reached, whichever is sooner.

3. Each vessel participating in the *Dissostichus eleginoides* fishery in Statistical Subarea 48.4 in the 1996/97 season shall have at least one scientific observer, including one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this Conservation Measure:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1996/97 season, commencing on March 1, 1997; and

(ii) The Monthly Fine-scale Effort and Biological Data Reporting System set out in Conservation Measure 117/XV shall apply in the 1996/97 season, commencing on March 1, 1997.

5. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for *Dissostichus eleginoides* in Statistical Subarea 48.4 shall be prohibited.

Conservation Measure 102/XV

Limits on the Fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 for the 1996/97 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 1996/97 season shall be limited to 5,000 ton.

2. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 1996/97 fishing season is defined as the period from March 1 to August 31 1997, or until the TAC is reached, whichever is the sooner.

3. Each vessel participating in the *Dissostichus eleginoides* fishery in Statistical Subarea 48.3 in the 1996/97 season shall have at least one scientific observer, including one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this Conservation Measure:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1996/97 season, commencing on March 1, 1997; and

(ii) The Monthly Fine-scale Effort and Biological Data Reporting System set out in Conservation Measure 117/XV shall apply in the 1996/97 season, commencing on March 1, 1997.

5. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for *Dissostichus eleginoides* in Statistical Subarea 48.3 shall be prohibited.

Conservation Measure 103/XV

Precautionary tac for *Electrona carlsbergi* in Statistical Subarea 48.3 for the 1996/97 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. For the purposes of this Conservation Measure the fishing season for *Electrona carlsbergi* is defined as the period from November 2, 1996 to the end of the Commission meeting in 1997.

2. The total catch of *Electrona carlsbergi* in the 1996/97 season shall not exceed 109,000 tons in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 1996/97 season shall not exceed 14,500 ton in the Shag Rocks region, defined as the area bounded by 52;30° S, 40;W; 52;30° S, 44;W; 54;30° S, 40;W and 54;30° S, 44;W.

4. In the event that the catch of *Electrona carlsbergi* is expected to exceed 20,000 tons in the 1996/97 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be made available in advance for discussion at the 1997 meeting of the Working Group on Fish Stock Assessment.

5. The directed fishery for *Electrona carlsbergi* in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 109,000 tons, whichever comes first.

6. The directed fishery for *Electrona carlsbergi* in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 14,500 tons, whichever comes first.

7. If, in the course of the directed fishery for *Electrona carlsbergi*, the catch of any one haul of any species other than the target species exceeds 5% of the total catch by weight, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not fish within 5 n miles of the location in which the catch of species, other than the target species, exceeded 5%, for a period of at least five days.[2]

8. For the purpose of implementing this Conservation Measure:

(i) The Catch Reporting System set out in Conservation Measure 40/X shall apply in the 1996/97 season; and

(ii) The Monthly Fine-scale Effort and Biological Data Reporting System set out in Conservation Measure 117/XV shall also apply in the 1996/97 season. For the purposes of Conservation Measure 117/XV, the target species is *Electrona carlsbergi*, and by-catch species are defined as any cephalopod, crustacea or fish species other than *Electrona carlsbergi*. For the purpose of paragraph 6(ii) of Conservation Measure 117/XV a representative sample shall be a minimum of 500 fish.

[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing locations by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 104/XV

Limits on the Crab Fishery in Statistical Subarea 48.3 in the 1996/97 Season

The following Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. In Statistical Subarea 48.3, the crab fishing season is defined as the period from 2 November 1996 to end of the Commission meeting in 1997, or until the TAC is reached, whichever is sooner.

3. The crab fishery shall be limited to one vessel per Member.

4. The total catch of crab from Statistical Subarea 48.3 shall not exceed 1,600 tons during the 1996/97 crab fishing season.

5. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

6. All vessels fishing for crab shall report the following data to CCAMLR by August 31, 1997 for crabs caught prior to July 31, 1997:

(i) The location, date, depth, fishing effort (number and spacing of pots and soak time), and catch (numbers and weight) of commercially sized crabs (reported on as fine a scale as possible, but no coarser than 0.5; latitude by 1.0; longitude) for each 10-day period;

(ii) The species, size, and sex of a representative subsample of crab sampled according to the procedure set out in Annex 104/A (between 35 and 50 crabs shall be sampled every day from the line hauled just prior to noon) and by-catch caught in traps; and

(iii) Other relevant data, as possible, according to the requirements set out in Annex 104/A.

7. For the purposes of implementing this Conservation Measure, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

8. Data on catches taken between July 31, 1997 and August 31, 1997 shall be reported to CCAMLR by September 30, 1997 so that the data will be available to the Working Group on Fish Stock Assessment.

9. Crab fishing gear shall be limited to the use of crab pots (traps). The use of all other methods of catching crabs (e.g., bottom trawls) shall be prohibited.

10. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *P. formosa,* males with a minimum carapace width of 102 mm and 90 mm, respectively, may be retained in the catch.

11. Crab processed at sea shall be frozen as crab sections (minimum size of crabs can be determined using crab sections).

Annex 104/A

Data Requirements on the Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data: Cruise Descriptions: Cruise code, vessel code, permit number, year.

Pot Descriptions: Diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions: Date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions: Retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

TABLE 1.—DATA REQUIREMENTS FOR BY-CATCH SPECIES IN THE CRAB FISHERY IN STATISTICAL SUBAREA 48.3.

Species	Data requirements
Dissostichus eleginoides.	Numbers and estimated total weight.
Notothenia rossii	Numbers and estimated total weight.
Other Species	Estimated total weight.

Biological Data: For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions: Cruise code, vessel code, permit number.

Sample Descriptions: Date, position at start of the set, compass bearing of the set, line number.

Data: Species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 105/XV

Limitation of Total Catch of *Lepidonotothen squamifrons* in Statistical Division 58.4.4 (Ob and Lena Banks) in the 1996/97 Season.

The Commission

Noting the intention of Ukraine to undertake a scientific survey of the design approved by the Scientific Committee in 1994 (CCAMLR–XIII, paragraphs 8.52 and 8.53) during the 1996/97 season,

Adopts the following Conservation Measure:

1. The total catch of *Lepidonotothen squamifrons* in Statistical Division 58.4.4 in the 1996/97 season shall be limited to 1 150 tons, and shall be made up of 715 tons on Lena Bank and 435 tons on Ob Bank.

2. For the purposes of this conservation measure the 1996/97 season is defined as the period from November 2, 1996 to the end of the Commission meeting in 1997.

3. For the purpose of implementing this Conservation Measure: (i) The Five-Day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1996/97 season commencing on November 2, 1996;

(ii) The Monthly Fine-Scale Effort and Biological Data Reporting System set out in Conservation Measure 117/XV shall apply for the target species *Lepidonotothen squamifrons*, and the by-catch species *Dissostichus eleginoides* in the 1996/97 season, commencing on November 2, 1996;

(iii) Age frequency, length frequency and age/length keys for *Lepidonotothen squamifrons, Dissostichus eleginoides* and any other species forming a significant part of the catch shall be collected and reported to each annual meeting of the Working Group on Fish Stock Assessment for each Bank separately on forms B2 and B3; and

(iv) The fishery for *Lepidonotothen squamifrons* shall be subject to review at the 1997 annual meetings of the Scientific Committee and the Commission.

4. Each vessel participating in the fishery in Statistical Division 58.4.4 in the 1996/97 season shall have a scientific observer, appointed in accordance with the Scheme of International Scientific Observation of CCAMLR, on board throughout all fishing activities within the fishing period.

Conservation Measure 106/XV

Precautionary Catch Limitation on *Euphausia superba* in Statistical Division 58.4.1.

The total catch of *Euphausia superba* in Statistical Division 58.4.1 shall be limited to 775,000 tons in any fishing season. A fishing season begins on July 1, and finishes on June 30, the following year.

This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee. For the purposes of implementing this Conservation Measure, the catches shall be reported to the Commission on a monthly basis.

Conservation Measure 107/XV

Limitation of the Total Catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 1996/97 Season.

The Commission adopted this Conservation Measure in accordance with Conservation Measure 7/v:

1. The total catch of *Champsocephalus gunnari* in the 1996/97 season shall not exceed 13,000 tons in Statistical Subarea 48.3.

2. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall close if the by-catch of any of the species listed in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Champsocephalus gunnari* reaches 13,000 tons, whichever comes first.

3. If, in the course of the directed fishery for *Champsocephalus gunnari,* the by-catch in any one haul of any of the species named in Conservation

Measures 95/XIV exceeds 5% of the total weight by catch, the fishing vessel shall move to another location at least 5n miles distant.[1] The fishing vessel shall not return to the location where the by-catch exceeded 5%, for a period of at least five days.[2]

4. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

5. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be closed from May 1, 1997 until the end of the Commission meeting in 1997.

6. Any vessel of any Member intending to participate in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 during the 1996/97 season shall be required to undertake a scientific survey carried out in accordance with the survey design specified in the Draft Manual for Bottom Trawl Surveys in the Convention Area (SC–CCAMLR–XI, Annex 5, Appendix H, Attachment E). A list of proposed trawl survey stations shall be transmitted to the Executive Secretary at least one month before the start of the survey.

7. Each vessel participating in the directed fishery for *Champsocephalus gunnari* in Subarea 48.3 in the 1996/97 season shall have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

8. For the purpose of implementing paragraphs 1 and 2 of this Conservation Measure:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1996/97 season; and

(ii) The Monthly Fine-scale Effort and Biological Data Reporting System set out in Conservation Measure 117/XV shall apply for *Champsocephalus gunnari.*

[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 109/XV

Limits on the fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 for the 1996/97 Season.

1. The total catch of *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 1996/97 season shall not exceed 3,800 tons.

2. For the purposes of this fishery, the 1996/97 season is defined as the period from November 2, 1996 to August 31, 1997, or until the TAC is reached, whichever is the sooner.

3. The TAC may only be taken by trawling.

4. Each vessel participating in the *Dissostichus eleginoides* fishery in Statistical Division 58.5.2 in the 1996/97 season shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

5. For the purpose of implementing this Conservation Measure:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII; and

(ii) The Monthly Fine-scale Effort and Biological Data Reporting System set out in Conservation Measure 17/XV, shall apply in the 1996/97 fishing season.

(iii) If, in the course of a directed fishery for *Dissostichus eleginoides*, the by-catch in any one haul of any of the species *Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus* or *Bathyraja* spp. exceeds 5% of the total catch by weight, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to the location where the by-catch exceeded 5% for a period of at least five days.[2]

(iv) Catches of other species not specified above, shall not exceed 50 tons, as set out in Conservation Measure 111/XIV.

(v) The total number and weight of *Dissostichus eleginoides* discarded, including those with the ''jellymeat'' condition, shall be reported. These fish will count towards the total allowable catch.

[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 110/XV

Precautionary Catch Limits on *Champsocephalus gunnari* in Statistical Division 58.5.2.

1. In accordance with the management advice of the 1994 meeting of the Scientific Committee a precautionary TAC of 311 tons in the 1996/97 season shall be set for *Champsocephalus gunnari* in Division 58.5.2.

2. For the purpose of this fishery on *Champsocephalus gunnari,* the 1996/97 season is defined as the period from November 2, 1996 to August 31, 1997, or until the TAC is reached, whichever is the sooner.

3. The TAC may only be taken by trawling.

4. If, in any haul, more than 10% of *Champsocephalus gunnari* are smaller than 28 cm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to the location where catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days.[2]

5. Each vessel participating in the *Champsocephalus gunnari* fishery in Statistical Division 58.5.2 in the 1996/97 season shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

6. For the purpose of implementing this Conservation Measure:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII; and

(ii) The Monthly Fine-scale Effort and Biological Data Reporting System set out in Conservation Measure 117/XV, shall apply in the 1996/97 fishing season.

7. If, in the course of a directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species *Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus* or *Bathyraja* spp. exceeds 5% of the total catch by weight, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to the location where the by-catch exceeded 5%, for a period of at least five days.[2]

8. Catches of other species not specified above shall not exceed 50 tons, as set out in Conservation Measure 111/XV.

9. The catch limit of *Champsocephalus gunnari* shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

[1] The provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 111/XV

New Fishery in Statistical Division 58.5.2 in the 1996/97 Season for Deep-water Species

The Commission

Welcoming the notification of Australia of its intention to conduct a new fishery in the 1996/97 season in Statistical Division 58.5.2 for deep-water species, not covered by Conservative Measures 109/XV and 110/XV,

Noting that no other Member has notified the Commission of the intent to establish a new fishery for these species in this Statistical Division,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. The new fishery by Australia for deep-water species, not covered by Conservation Measures 109/XV and 110/XV, shall be limited to 50 tons for each species. The fishery shall be conducted by trawling only.

2. For the purposes of this new fishery, the fishing season is defined as the period from November 2, 1996 to August 31, 1997.

3. Each vessel participating in this new fishery in Statistical Division 58.5.2 in the 1996/97 season shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Observation on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this Conservation Measure:

(i) The Ten-day Catch and Effort Reporting System, as set out in Conservation Measure 61/XII; and

(ii) The Monthly Fine-scale Effort and Biological Data Reporting System set out in Conservation Measure 117/XV, shall apply in the 1996/97 fishing season.

5. If the by-catch in any one haul of any of the species *Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus* or *Bathyraja* spp. exceeds 5% of the total catch by weight, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to the location where the by-catch exceeded 5%, for a period of at least five days.[2]

[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

Conservation Measure 112/XV

General Measure for New Fisheries for *Dissostichus* Species in the Convention Area for the 1996/97 Season

The Commission

Noting need for the distribution of fishing effort and appropriate catch levels in fine-scale rectangles in these new fisheries,

adopts the following Conservation Measure in accordance with Conservation Measure 32/X:

1. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any fine-scale rectangle [1] shall cease when the reported catch reaches 100 tons and that rectangle shall be closed to fishing for the remainder of the season. Fishing in any fine-scale rectangle shall be restricted to one vessel at any one time.

2. In order to give effect to paragraph (1) above:

(i) The precise geographic position of the mid-point between the start and end of the haul/line shall be determined using appropriate means;

(ii) Catch and effort information for each species by fine-scale rectangle shall be reported to the Executive Secretary every five days using the Five-Day Catch and Effort Reporting System set out in Conservation Measure 51/XII; and

(iii) The Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus eleginoides* and *D. mawsoni* combined in any fine-scale rectangle exceeds 100 tons.

3. Any new fishery for *Dissostichus* species in the 1996/97 season shall be deemed to have demonstrated commercial potential if catches in the Statistical Subarea or Divisions concerned reach 1,980 tons. In this event, the fishery shall be closed and the provisions of Conservation Measure 65/XII shall apply.

4. The by-catch of any species in the new fisheries for *Dissostichus* spp. other than *Dissostichus eleginoides* and *D. mawsoni* in the Statistical Subareas and Divisions concerned shall not exceed 50 tons.

5. Each vessel participating in the new fisheries for *Dissostichus* species during the 1996/97 season shall have on board at least one scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, throughout all fishing activities within the fishing season.[2]

6. The total number of weight of *Dissostichus eleginoides* and *D. mawsoni* discarded, including those with the ''jellymeat'' condition, shall be reported.

7. For the purpose of implementing this Conservation Measure the Monthly Fine-scale Effort and Biological Data Reporting System set out in Conservation Measure 117/XV shall apply in the 1996/97 season.

8. Monthly effort and biological data shall be reported in accordance with Conservation Measure 40/X. By-catch species are defined as any cephalopod, crustacean or fish species other than *Dissostichus* species.

[1] A fine-scale rectangle is defined as an area of 0.5° latitude by 1° longitude with respect to the northwest corner of the Statistical Subarea or Division. The identification of each rectangle is by the latitude of its northernmost boundary and the longitude of the boundary closest to 0°.

[2] In respect of this provision, South Africa reserves its right to carry only national observers in the waters adjacent to the Prince Edward Islands.

Conservation Measure 113/XV

New Fishery for *Dissostichus eleginoides* and *D. mawsoni* in Statistical Division 58.4.3 in the 1996/97 Season

The Commission

Welcoming the notification of Australia and South Africa of their intention to conduct new fisheries in Statistical Division 58.4.3 for *Dissostichus eleginoides* and *D. mawsoni* in the 1996/97 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for *Dissostichus eleginoides* and *D. mawsoni* in Statistical Division 58.4.3 shall be limited to the new fisheries by Australia and South Africa.

2. Fishing shall cease in Statistical Division 58.4.3 if the commercial potential is demonstrated in accordance with the definition given in Conservation Measure 112/XV, paragraph 3.

3. For the purposes of these new fisheries, the fishing season for longlining is defined as the period from 1 March 1997 until 31 August 1997. The fishing season for trawling commences on 2 November 1996 and ends on 31 August 1997.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 112/XV and 117/XV.

Conservation Measure 114/XV

New Fishery for *Dissostichus eleginoides* and *D. mawsoni* in Statistical Subarea 48.6 in the 1996/97 Season

The Commission

Welcoming the notification of South Africa of its intention to conduct a new fishery in Subarea 48.6 for *Dissostichus eleginoides* and *D. mawsoni* in the 1996/97 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for *Dissostichus eleginoides* and *D. mawsoni* in Statistical Subarea 48.6 shall be limited to the new fishery by South Africa. The fishery shall be conducted by longlining only.

2. Fishing shall cease in Statistical Subarea 48.6 if the commercial potential is demonstrated in accordance with the definition given in Conservation Measure 112/XV, paragraph 3.

3. For the purposes of this new fishery, the fishing season is defined as the period from 1 March 1997 until 31 August 1997.

4. The directed fishery for the above species shall be carried out in accordance with Conservation Measures 112/XV and 117/XV.

Conservation Measure 115/XV

New Fishery for *Dissostichus eleginoides* and *D. mawsoni* in Statistical Subareas 88.1 and 88.2 in the 1996/97 Season

The Commission

Welcoming the notification of New Zealand of its intention to conduct a new fishery in Statistical Subareas 88.1 and 88.2 for *Dissostichus eleginoides* and *D. mawsoni* species in the 1996/97 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for *Dissostichus eleginoides* and *D. mawsoni* in Statistical Subareas 88.1 and 88.2 shall be limited to the new fishery by New Zealand. The fishery shall be conducted by longlining only.

2. Fishing shall cease in Statistical Subareas 88.1 and 88.2 if the commercial potential is demonstrated in accordance with the definition given in Conservation Measure 112/XV, paragraph 3.

3. For the purposes of this new fishery, the fishing season is defined as the period from 15 February until 31 August 1997.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 112/XV and 117/XV.

Conservation Measure 116/XV [1,2]

New Fisheries for *Dissostichus eleginoides* and *D. mawsoni* in Statistical Subareas 58.6, 58.7 and Statistical Division 58.4.4 in the 1996/97 Season.

The Commission

Welcoming the notification of South Africa of its intention to conduct new fisheries in Statistical Subareas 58.6, 58.7 and Division 58.4.4 for *Dissostichus eleginoides* and *D. mawsoni* in the 1996/97 season,

adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for *Dissostichus eleginoides* and *D. mawsoni* in Statistical Subareas 58.6, 58.7 and Division 58.4.4 shall be limited to the new fisheries by South Africa. These fisheries shall be conducted by longlining only.

2. Notwithstanding the provisions of paragraph 3 of Conservation Measure 112/XV, in Statistical Subareas 58.6 and 58.7 any new fishery for *Dissostichus* in the 1996/97 season shall be deemed to have demonstrated commercial potential if catches in the Statistical Subareas concerned reach 2,200 tons. In this event, the fishery shall be closed and the provisions of Conservation Measure 65/XII shall apply.

3. Fishing shall cease in Division 58.4.4 if commercial potential is demonstrated in accordance with the definition given in Conservation Measure 112/XV, paragraph 1.

4. For the purposes of this new fishery, the fishing season is defined as the period from 1 March until 31 August 1997.

5. The directed fisheries for the above species shall be in accordance with Conservation Measures 112/XV and 117/XV except as foreseen in paragraph 2 above.

[1] For the purposes of this Conservation Measure South Africa has chosen to include the waters adjacent to the Prince Edward Islands.

[2] Except for the waters adjacent to the Crozet Islands.

Conservation Measure 117/XV [1 2]

Monthly Fine-Scale Effort and Biological Data Reporting System for Trawl and Longline Fisheries

This Conservation Measure is adopted in accordance with Conservation Measure 7/V, where appropriate.

This Conservation Measure is envoked by the Conservation Measures to which it is attached.

1. Specification of ''target species'' and ''by-catch species'' referred to in this Conservation Measure shall be made in the Conservation Measure to which it is attached.

2. At the end of each month each Contracting Party shall obtain from each of its vessels the data required to complete the CCAMLR fine-scale catch and effort data form (trawl fisheries Form C1, latest version or longline fisheries Form C2, latest version). It shall transmit those data in the specified format to the Executive Secretary not later than the end of the following month.

3. The catch of all target and by-catch species must be reported by species.

4. The numbers of seabirds and marine mammals of each species caught and released or killed must be reported.

5. At the end of each month each Contracting Party shall obtain from each of its vessels representative samples of length composition measurements of the target species and by-catch species from the fishery (Form B2, latest version). It shall transmit those data in the specified form to the Executive Secretary not later than the end of the following month.

6. For the purpose of implementing this Conservation Measure:

(i) Length measurements of fish should be of total length to the nearest centimeter below;

(ii) Representative samples of length composition should be taken from a single fine-scale grid rectangle (0.5° latitude by 1° longitude). In the event the vessel moves from one fine-scale grid rectangle to another during the course of a month, then separate length compositions should be submitted for each fine-scale grid rectangle.

7. Should a Contracting Party fail to transmit the fine-scale catch and effort data or length composition data to the Executive Secretary in the appropriate form by the deadline specified in paragraphs 2 and 5, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still have been provided, the Executive Secretary shall notify all Contracting parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

Conservation Measures Still in Force Which Are Not Addressed by U.S. Regulations

At its Fifteenth Annual Meeting, CCAMLR also agreed that Conservation Measures 2/III, 3/IV, 4/V, 5/V, 6/V, 7/V,

[1] Except for waters adjacent to the Kerguelen and Crozet Islands

[2] Except for waters adjacent to the Prince Edward Islands

18/XIII, 19/IX, 30/X, 31/X, 32/X, 40/X, 45/XIV, 51/XII, 61/XII, 62/XI, 64/XIII, 65/XII, 72/XII, 73/XII, 82/XIII AND 95/XIV should remain in force for the 1996/97 fishing season (defined as November 2, 1996 through November 7, 1997). These Conservation Measures were noticed in the Federal Register in the years in which they were adopted. They have been agreed to by the United States, after public comment, and cannot be modified. However, since the requirements of Conservation Measures 2/III, 3/IV, 5/V, 6/V, 7/V, 30/X, 31/X, 32/X, 40/X, 45/XIV, 51/XII, 61/XII, 65/XII, 72/XII, 73/XII and 95/XIV are not included in U.S. regulations, they are included in this Federal Register notice.

Conservation Measure 2/III

Mesh Size (As Amended in accordance with Conservation Measure 19/IX)

1. The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishery for:

Notothenia rossii, Dissostichus eleginoides—120 mm

Gobionotothen gibberifrons, Notothenia kempi, Lepidonotothen squamifrons—80 mm

2. It is prohibited to use any means or device which would obstruct or diminish the size of the meshes.

3. This Conservation Measure does not apply to fishing conducted for scientific research purposes.

4. This Measure will apply as of 1 September 1985.

Conservation Measure 3/IV

Prohibition of Directed Fishery on *Notothenia rossii* around South Georgia (Statistical Subarea 48.3)

1. Directed fishing on *Notothenia rossii* around South Georgia (Statistical Subarea 48.3) is prohibited.

2. By-catches of *Notothenia rossii* in fisheries directed to other species shall be kept to the level allowing the optimum recruitment to the stock.

Conservation Measure 5/V [1]

Prohibition of Directed Fishery on *Notothenia rossii* in the Peninsula Area (Statistical Subarea 48.1)

The Commission hereby adopts the following Conservation Measure in accordance with Article IX of the Convention: Directed fishing on *Notothenia rossii* in the Peninsula Area (Statistical Area 48.1) is prohibited.

By-catches of *Notothenia rossii* in fisheries directed to other species shall be kept to the level allowing the optimum recruitment to the stock.

By-catches of *Notothenia rossii* in fisheries directed to other species shall be kept to the level allowing the optimum recruitment to the stock.

[1] This Conservation Measure remains in force, but is currently encompassed within the provisions in Conservation Measure 72/XII.

Conservation Measure 6/V [1]

Prohibition of Directed Fishery on *Notothenia rossii* around South Orkneys (Statistical Subarea 48.2).

The Commission hereby adopts the following Conservation Measure in accordance with Article IX of the Convention: Directed fishing on *Notothenia rossii* around South Orkneys (Statistical Subarea 48.2) is prohibited. By-catches *of Notothenia rossii* in fisheries directed to other species shall be kept to the level allowing the optimum recruitment to the stock.

[1] This Conservation Measure remains in force, but is currently encompassed within the provisions in Conservation Measure 73/XII.

Conservation Measure 7/V

Regulation of Fishing around South Georgia (Statistical Subarea 48.3)

Without prejudice to other Conservation Measures adopted by the Commission, for species upon which fisheries are permitted around South Georgia (Statistical Subarea 48.3), the Commission shall, at its 1987 Meeting, adopt limitations on catch, or equivalent measures binding for the 1987/88 season.

Such limitations of catch or equivalent measures shall be based upon the advice of the Scientific Committee, taking into account any data resulting from fishery surveys around South Georgia. For each fishing season after 1987/88, the Commission shall establish such limitations or other measures, as necessary, around South Georgia on a similar basis at the meeting of the Commission immediately preceding that season.

Measure 30/X [1]

Net Monitor Cables

The use of net monitor cables on harvesting vessels in the CCAMLR Convention Area is prohibited from the 1994/95 fishing season.

[1] Except for water adjacent to the Kerguelen and Crozet Islands.

Conservation Measure 31/X [1 2]

Notification That Members are Considering Initiating a New Fishery

The Commission,

Recognizing that in the past, Antarctic fisheries have been initiated in the Convention Area before sufficient information was available upon which to base management advise,

Noting that in recent years new fisheries have started without adequate information being available to evaluate either the fishery potential or the possible impacts on the target stocks or species dependent on them,

Believing that without prior notification of a new fishery, the Commission is unable to fulfill its function under Article IX,

hereby adopts the following Conservation Measure in accordance with Article IX of the convention:

1. A new fishery, for the purposes of this Conservation measure, is a fishery on a species using a particular fishing method in a statistical subarea for which:

(1) Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing have not been submitted to CCAMLR; or

(ii) Catch and effort data have never been submitted to CCAMLR; or

(iii) Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

2. A Member intending to develop a new fishery shall notify the Commission not less than three months in advance of the next regular meeting of the Commission, where the matter shall be considered. the Member shall not initiate a new fishery pending the process specified in paragraphs 4 and 5 below.

3. The notification shall be accompanied by as much of the following information as the Member is able to provide:

(i) The nature of the proposed fishery including target species, methods of fishing, proposed region and any minimum level of catches that would be required to develop a viable fishery;

(ii) Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity;

(iii) Details of dependent and associated species and the likelihood of them being affected by the proposed fishery; and

(iv) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield.

4. The information provided in accordance with paragraph 3, together with any other relevant information,

shall be considered by the Scientific Committee, which shall then advise the Commission.

5. After its review of the information on the proposed new fishery, taking full account of the recommendations and the advice of the Specific Committee, the Commission may then take such action as it deems necessary.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 32/X

Precautionary Catch Limitations on Euphausia superba in Statistical Area 48

The total catch of Euphausia superba in Statistical Area 48 shall be limited to 1.5 million tons in any fishing season. A fishing season begins on 1 July and finishes on 30 June of the following year.

This limit shall be kept under review by the Commission, taking into account the advice of the scientific Committee. Precautionary limits to be agreed by the Commission on the basis of advice of the Scientific Committee shall be applied to subareas, or on such other basis as the Scientific Committee may advise, if the total catch in Statistical Subareas 48.1, 48.2 and 48.3 in any fishing season exceeds 620,000 tons.

For the purpose of implementing this Conservation Measure the catches shall be reported to the Commission on a monthly basis.

Conservation Measure 40/X

Monthly Catch and Effort Reporting System

This Conservation Measure is adopted in accordance with Conservation Measure 7/V where appropriate:

1. For the purposes of this Catch and Effort Reporting System the reporting period shall be defined as one calendar month.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable or telex, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period.

3. Such reports shall specify the month to which each report refers.

4. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. The estimate shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

5. In the case of finfish, if the estimated date of completion of the TAC is within one reporting period of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later.

Conservation Measure 45/XIV

Precautionary Catch Limitation on *Euphausia superba* in Statistical Division 58.4.2

The total catch of *Euphausia Superba* in Statistical Division 58.4.2 shall be limited to 450,000 tons in any fishing season. A fishing season begins on 1 July and finishes on 30 June of the following year.

This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

For the purposes of implementing this Conservation Measure, the catches shall be reported to the Commission on a monthly basis.

Conservation Measure 51/XII

Five-day Catch and Effort Reporting System

This Conservation Measure is adopted in accordance with Conservation Measure 7/V where appropriate:

1. For the purposes of this Catch and Effort Reporting System the calendar month shall be divided into six reporting periods, viz: day 1 to day 5, day 6 to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25 and day 26 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B, C, D, E and F.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable, telex or facsimile, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period. In the case of longline fisheries, the number of hooks shall also be reported.

3. A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery even if no catches are taken.

4. The catch of all species, including by-catch species, must be reported.

5. Such reports shall specify the month and reporting period (A, B, C, D, E or F) to which each report refers.

6. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the area, of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. The estimate shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

7. At the end of every six reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the six most recent reporting periods, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season.

8. If the estimated date of completion of the TAC is within five days of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later.

Conservation Measure, 61/XII

Ten-day Catch and Effort Reporting System

This Conservation Measure is adopted in accordance with Conservation Measure 7/V where appropriate:

1. For the purposes of this Catch and Effort Reporting System the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20, day 21 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B and C.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable, telex or facsimile, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period. In the case of long line fisheries, the number of hooks shall also be reported.

3. A report must be submitted by every Contracting Party taking part in

the fishery for each reporting period for the duration of the fishery even if no catches are taken.

4. The retained catch of all species and by-catch species, must be reported.

5. Such reports shall specify the month and reporting period (A, B and C) to which each report refers.

6. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the area, of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. The estimate shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

7. At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the local catch taken during the three most recent reporting periods, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season.

8. If the estimated date of completion of the TAC is within ten days of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later.

Conservation Measure 65/XII [1,2]

Exploratory Fisheries

The Commission,

Recognizing that in the past, some Antarctic fisheries had been initiated and subsequently expanded in the Convention Area before sufficient information was available upon which to base management advice, and

Agreeing that exploratory fishing should not be allowed to expand faster than the acquisition of information necessary to ensure that the fishery can and will be conducted in accordance with the principles set forth in Article II, *hereby adopts* the following Conservation Measure in accordance with Article IX of the Convention:

1. For the purposes of this Conservation Measure, exploratory fisheries are defined as follows

(i) An exploratory fishery shall be defined as a fishery that was previously classified as a 'new fishery', as defined by Conservation Measure 31/X;

(ii) An exploratory fishery shall continue to be classified as such until sufficient information is available:

(a) To evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery's potential yield,

(b) To review the fishery's potential impacts on dependent and related species, and

(c) To allow the Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels, as well as effort levels and fishing gear, where appropriate.

2. To ensure that adequate information is made available to the Scientific Committee for evaluation, during the period when a fishery is classified as exploratory:

(i) The Scientific Committee shall develop (and update annually as appropriate) a Data Collection Plan, which will identify the data needed and describe the actions necessary to obtain the relevant data from the exploratory fishery;

(ii) Each Member active in the fishery shall annually (by the specified date) submit to CCAMLR the data specified by the Data Collection Plan developed by the Scientific Committee;

(iii) Each Member active in the fishery or intending to authorize a vessel to enter the fishery shall annually prepare and submit to CCAMLR by a specified date a Research and Fishery Operations plan for review by the Scientific Committee and the Commission;

(iv) Prior to any Member authorizing its vessels to enter an exploratory fishery that is already in progress, that Member shall notify the Commission not less than three months in advance of the next regular meeting of the Commission, and the Member shall not enter the exploratory fishery until the conclusion of that meeting;

(v) It the data specified in the Data Collection Plan have not been submitted to CCAMLR for the most recent season in which fishing occurred, continued exploratory fishing by the Member which failed to report its data shall be prohibited until the relevant data have been submitted to CCAMLR and the Scientific Committee has been allowed an opportunity to review the data;

(vi) Fishing capacity and effort shall be limited by a precautionary catch limit at a level not substantially above that necessary to obtain the information specified in the Data Collection Plan and required to make the evaluations outlined in paragraph 1(ii);

(vii) The name, type, size, registration number, and radio call sign of each vessel participating in the exploratory fishery shall be registered with the CCAMLR Secretariat at least three months in advance of starting fishing each season; and

(viii) Each vessel participating in the exploratory fishery shall carry a scientific observer to ensure that data are collected in accordance with the agreed Data Collection Plan, and to assist in collecting biological and other relevant data.

3. The Data Collection Plan to be formulated and updated by the Scientific Committee shall include, where appropriate:

(i) A description of the catch, effort, and related biological, ecological, and environmental data required to undertake the evaluations described in paragraph 1(ii) and the date by which such data are to be reported annually to CCAMLR;

(ii) A plan for directing fishing effort during the exploratory phase to permit the acquisition of relevant data to evaluate the fishery potential and the ecological relationships among harvested, dependent, and related populations and the likelihood of adverse impacts; and

(iii) A evaluation of the time-scales involved in determining the responses of harvested, dependent, and related populations to fishing activities.

4. Research and Fishing Operations plans to be prepared by Members participating or intending to participate in the exploratory fishery shall include as much of the following information as the Member is able to provide:

(i) A description of how the Member's activities will comply with the Data Collection Plan developed by the Scientific Committee;

(ii) The nature of the exploratory fishery, including target species, methods of fishing, proposed region and maximum catch levels proposed for the forth corning season;

(iii) Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data, and information on stock identity;

(iv) Details of dependent and related species and the likelihood of them being affected by the proposed fishery; and

(v) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for water adjacent to the Prince Edward Islands.

Conservation Measure 72/XII

Prohibition of Directed Fishing for Finfish in Statistical Subarea 48.1

Taking of finfish, other than for scientific research purposes, is prohibited in Statistical Subarea 48.1 from 6 November 1993 until at least such time that a survey of stock biomass is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be re-opened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 73/XII

Prohibition of Directed Fishing for Finfish in Statistical Subarea 48.2

Taking of finfish, other than for scientific research purposes, is prohibited in Statistical Subarea 48.2 from 6 November 1993 until at least such time that a survey of stock biomass is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be re-opened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 95/XIV

Limitation of the By-catch of *Gobinonotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Notothenia rossii and Lepidonotothen squamifrons* in Statistical Subarea 48.3

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

In any directed fishery in Statistical Subarea 48.3 in any fishing season, the by-catch of *Gobinonotothen gibberifrons* shall not exceed 1,470 tons; the by-catch of *Chaenocephalus aceratus* shall not exceed 2,200 tons; and the by-catch of *Pseudochaenichthys georgianus, Notothenia rossii* and *Lepidonotothen squamifrons* shall not exceed 300 tons each. These limits shall be kept under review by the Commission taking into account the advice of the Scientific Committee.

Dated: December 11, 1996.

R. Tucker Scully,

Director, Office of Oceans Affairs.

[FR Doc. 96–31852 Filed 12–17–96; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice No. 2484]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Tuesday, January 7, 1997, in room 6319, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC.

The purpose of the meeting is to prepare for the 43rd session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is scheduled for July 14–18, 1997, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships, ship reporting, and related matters
—Development of measures complementary to the Code for Safe Carriage of Irradiated Nuclear Fuel (INF)
—Revision of SOLAS chapter V
—Ergonomic criteria for bridge equipment and layout
—Navigational aids and related matters
—International Telecommunication Union (ITU) matters including Radiocommunication ITU–R Study Group 8
—Amendments to the Merchant Ship Search and Rescue (MERSAR) Manual (1995 SOLAS/Conference resolution 8)
—Operational aspects of wing in ground (WIG) craft
—Possible amendments to the International Regulations for Prevention of Collisions at Sea (COLREGS)

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–MOV–3), Room 1407, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: December 9, 1996.

Russell A. LaMantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 96–32037 Filed 12–17–96; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 96–10–6 established the currently effective two-month SFFL applicable through November 30, 1996.

In establishing the SFFL for the two-month period beginning December 1, 1996, we have projected non-fuel costs based on the year ended September 30, 1996 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 96–12–14 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.4885
Latin America—1.5394
Pacific—1.5602

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: December 12, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–32027 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed policy; request for comments.

SUMMARY: On February 26, 1996, the FAA published for public comment, a comprehensive statement of policy and procedures concerning the use of airport revenue, based on the requirement that revenue at public airports have received Federal grants generally be used only for airport purposes. Comments received on the notice included comments on four issues not discussed in detail in the February notice: (1) The use of airport property and funds for community or charitable purposes; (2) the extent to which airport funds may be used for marketing and promotional activities; (3) guidance on the accounting and cost allocation practices that the FAA considers acceptable for purposes of compliance with the revenue retention requirement; and (4) the use of airport

property for public transportation facilities. This supplemental notice proposes additions to the policy proposed in February 1996 to include specific policies and guidance on these four issues, based on comments received. The final policy will reflect comments received on this supplemental notice as well as the general notice published in February. While the policy statement proposed is not made effective at this time, statutory requirements relating to the use of airport revenue remain in effect and will be enforced by the FAA. Airport sponsors may assume that the FAA would act consistently with the views expressed in this document in any enforcement action for revenue diversion taken before a final policy statement is issued.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Comments should be mailed, in quadruplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28472, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: ''Docket No. 28472.'' Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28472.'' The postcard will be date stamped and mailed to the commenter.

Comments on this Notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Benedict D. Castellano, Manager, Airport Safety and Compliance Branch, AAS–310, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267–8728; or Jonathan W. Cross, Airports Law Branch, AGC–610, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3473.

SUPPLEMENTARY INFORMATION:

This proposed statement of policy and related procedures is being published pursuant to section 112(a) of the Federal Aviation Administration Authorization Act of 1994, Pub. L. 103–305 (August 23, 1994) (1994 Authorization Act). That section requires the Secretary to establish policies and procedures assuring the ''prompt and effective enforcement'' of the requirement relating to the use of airport revenue (also called the ''revenue retention requirement'') (49 U.S.C. 47107(b)) and the requirement that airports be as self-sustaining as possible (49 U.S.C. 47107(a)(13)), and of the Airport Improvement Program (AIP) sponsor assurances made under these sections. Section 112 includes specific guidance and requirements for the mandated policies and procedures.

For convenience, the term ''sponsor'' is used throughout this document to mean the state or local government body obligated under an airport grant agreement. For purposes of the proposed policy statement the term is generally interchangeable with the term ''airport owner or operator'' used in some statutes. A sponsor may be an entity that exists only to operate the airport, such as an airport authority established by state law, or may be an authority established to operate a variety of transportation facilities including an airport. Other airports are owned by a state, county, or city government and operated by an agency of that government, in which case the state, county, or city is the sponsor, rather than the subordinate agency.

The Revenue Retention Requirement

Under the Airport and Airway Improvement Act of 1982, as amended (AAIA), part of title V of the Tax Equity and Fiscal Responsibility Act, Pub. L. 97–248, repealed and reenacted without substantive change, Pub. L. 103–272 (July 5, 1994), 49 U.S.C. 47101, *et seq.*, as amended by Pub. L. 103–305 (August 23, 1994), public agencies receiving Federal grants for airport development since September 3, 1982, are required to comply with the revenue retention requirement, section 511(a)(12) of the AAIA, now codified at 49 U.S.C. 47107(b). The revenue retention assurance requires airport owners to use ''* * * all revenues generated by the airport * * * for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual air transportation of passengers or property.''

The Requirement To Be as Self-Sustaining as Possible

A related requirement of the AAIA with respect to airport revenue is the requirement that an airport have a rate structure that makes the airport as self-sustaining as possible under the circumstances existing at the airport. 49 U.S.C. 47101(a)(13). The reason for this requirement is to minimize an airport's reliance on Federal funds, and also to minimize the need for the airport to be supported by local taxation. Many of the OIG audits of airport revenue have found instances of a rate structure in which the airport apparently could have charged more for the non-aeronautical use of property than it has. Several of these findings related specifically to the use of property for community-relations purposes, such as for parks. In another case, the OIG found that the airport operator did not charge a sufficient rate for the use of airport property for a local public bus terminal.

In general, the FAA interprets the self-sustaining assurance to require that a sponsor charge a fair-market commercial rate for non-aeronautical leases and activities on an airport. The FAA has not insisted on the airport's standard commercial rate for uses of property for which it is unreasonable to expect a commercial rent, and has permitted temporary uses of property at below-market rates pending future commercial use.

Notice of Proposed Policy

On February 26, 1996, the FAA published a Notice of Proposed Policy entitled ''Policy and Procedures Concerning the Use of Airport Revenue'' (61 FR 7134). The period for public comment closed on April 26, 1996. The FAA received comments from 34 commenters on all aspects of the proposed policy. Comments were received from various nonprofit and trade organizations including the Air Transport Association and International Air Transport Association, the American Association of Airport Executives (AAAE) and the Airports Council International-North America (ACI–NA), and the Aircraft Owners and Pilots Association; from individual airport operators and state and local governments; and from an automobile rental firm. The comments will be addressed in the final policy statement to be issued in this docket.

The February notice listed several examples of uses of airport revenue that respectively are or are not considered appropriate expenditures under the terms of section 47107(b). The lists were not exhaustive, however, and not all possible uses of airport revenue were included. Many of the commenters submitted comments on issues that they believed should be included in the final policy, but which were not addressed in detail in the February proposal. In consideration of the comments, the FAA believes that several of these issues are sufficiently significant that supplemental guidance should be proposed for public comment before the adoption of a final policy. In summary, these issues are (1) The use of airport

property and funds for community or charitable purposes; (2) the extent to which airport funds may be used for marketing and promotional activities; (3) guidance on the accounting and cost allocation practices that the FAA considers acceptable for purposes of compliance with the revenue retention requirement; and (4) the use of airport property for public transportation facilities. This notice proposes to add new language to the policy statement published in the February notice to address each of these issues. Each issue is discussed separately below.

As with the practices specifically discussed in the proposed policy published in February, the four practices discussed below are not new requirements, but rather are an articulation of the FAA's proposed implementation of a statute that has been in effect since 1982.

It should be noted that the use of airport property for community purposes and public transit at less-than-market rates generally involves the self-sustaining requirement rather than the revenue retention requirement. The revenue retention requirement and the self-sustaining requirement often arise in the same circumstances at an airport, and both requirements are cited frequently in audits of airport revenue by the Office of the DOT Inspector General (OIG). In order to provide comprehensive guidance on the use of airport revenue and property consistent with the airport's grant assurances, the FAA is proposing to include more specific guidance on the self-sustaining requirement in the final revenue diversion policy to the extent necessary to address the use of airport property for community ''good-will'' and public transit purposes.

1. Use of Airport Property for Community Charitable Purposes; Donation of Airport Funds for Community Charitable Purposes

Discussion of Comments.

The OIG has found either revenue diversion or failure to obtain fair rental value for airport property, or both, in 38 audits. In several of those cases the OIG has cited the practice of leasing airport property for charitable or community purposes, such as a park or ball field, at no cost or at a below-market rental rate. The OIG considers this practice to be a violation of the grant assurance obligating the airport to maintain a fee and rental structure which will make the airport as self-sustaining as possible under the circumstances. Where the property is made available to an agency of the sponsor, such as a parks department, the below-market lease could also be considered a violation of the revenue retention requirement, since the sponsor is choosing to subsidize its own non-aeronautical activities with airport resources and could modify the arrangement at any time.

Similarly, in an audit of revenues at airports operated by the City of Los Angeles, the OIG found the donation of airport funds (as opposed to no-cost use of land) to non-profit and community groups to be an unlawful diversion of airport revenue.

The February notice of proposed policy does not discuss an exception for community-purpose use of property, but in practice the FAA has in limited circumstances permitted use of property at less than fair market rental without finding a violation of the self-sustaining or revenue use requirements. For example, in Arlington, Washington, the FAA permitted the City of Arlington to maintain a park on airport property for which there was no current commercial demand, if the property remained available for commercial use, permanent improvements for the park were not made, and no airport funds were used for the park. In the comments on the proposed policy, a substantial number of commenters requested a policy permitting practices of the kind found by the OIG at Los Angeles airports. Specifically, commenters used various terms to argue that the policy should permit: Use of airport land for non-profit, public service agencies for a nominal fee; de minimis support for a community purpose; use of property which is not otherwise productive at less than FMV for local government, parks and recreation, or other community purposes; use of airport property by community groups, with limits; de minimis community participation expenditures; goodwill community events; community involvement; minor community goodwill expenses, etc. Supporting commenters argue that an airport operator needs some flexibility to maintain positive relations with surrounding communities, in consideration of the adverse impacts of the airport (e.g., noise, commercial zoning), to ensure that the airport is accepted as much as possible and that present and future airport development is not restricted by local political action.

On the basis of the substantial number of similar comments received on this issue, and the fact that similar practices have been found in several OIG audits, the FAA believes that some form of below-market contribution of the use of property for community use is a common and long-standing practice at U.S. airports. In consideration of the apparent prevalence of this practice and the comments received on the issue, and of the FAA's past practice, the FAA is proposing to adopt a policy that would permit the limited use of airport property for certain community-related purposes as a legitimate cost of operating the airport.

In specifying the permissible use of airport property for 'community' purposes and appropriate limits on such use to maintain consistency with the requirements of 49 U.S.C. 47107(b) or 47101(a)(13), the FAA has considered the following issues raised by the OIG audits and the public comments received:

Should the airport's need to ''be a good neighbor'' to the local community be considered a ''circumstance existing at the airport'' under section 47107(a)(13(A) that would justify permitting use of airport land for public purposes, at below-market or zero rent, by local governments and non-profit organizations?

How should the commercial desirability of the property, or the availability of the property for unrestricted development, affect the determination of whether its lease at below-fair-market rent is consistent with the self-sustaining requirement? I.e., should it be easier to find justifying circumstances for the below-market lease of property that is subject to some airport-related impairment on use? Examples of impairments of commercial land use could be, for example, part 77 surfaces close to the surface, location of the land in a runway protection zone, or location of the land within a noise contour that is not compatible with the prevailing land uses in the area.

Should expenditure of airport funds for purposes of community goodwill be considered an ''operating cost of the airport'' for purposes of section 47107(b)?

If so, should some limit be established on ''community goodwill'' expenditures? E.g., ACI–NA and AAAE have proposed a ''safe harbor'' for community participation expenditures at a de minimis level.

Proposed Policy

The FAA proposes to recognize that making airport property available for general, public community purposes such as parks and recreation areas, for the purpose of maintaining positive airport-community relations, can be a legitimate function of an airport proprietor in operating the airport. Accordingly, in certain circumstances providing airport land for such purposes will not be considered a violation of the

self-sustaining requirement. Generally, below-market use of airport land for community purposes will be considered consistent with the assurance if the community use of the property can be justified as benefiting the airport and the property involved is not expected to produce substantial income at the time the community use is contemplated. Benefit to the airport can be tangible, in the form of action to maintain the condition or security of the airport property used, or intangible, such as the contribution to good relations with surrounding communities. The greater the difference between the fair rental value of the property and the actual amount of the lease, the greater the burden of showing an airport-related benefit. Some indications that the property would not be expected to produce commercial income at the time would be that (1) The property is subject to airport-related restrictions on use and structures, (2) the property is subject to terrain, access limitations, or other factors that make it unsuitable for commercial use, or (3) there is no apparent commercial demand for the property due to general market conditions in the area. In any event the above conditions would be considered in determining the fair rental value of the property in question.

The use of airport *funds* to support community activities and participation in community events would not be considered an airport cost unless the expenditure is directly related to the operation of the airport. For example, expenditure to support participation in the Airport's Federally approved disadvantaged business enterprise program would be considered permissible as supporting a use directly related to the operation of the airport.

Use of airport property for community purposes by other departments of the sponsoring government agency with park, recreational, or similar responsibilities could meet the test of this policy, but would be subject to special scrutiny for evidence that the use was beneficial to the airport. This exception would not apply where the sponsor was using airport property simply as a source of inexpensive land for the sponsor's general governmental purposes.

II. Use of Airport Revenue for Economic Development, Airport Marketing, and Airport Promotion

Discussion

Many if not most sponsors of commercial airports engage in some form of promotional effort, to encourage use of the airport and increase the level of scheduled service for passengers and cargo shippers. Congress, in the FY 94 Authorization Act, effectively affirmed the legitimacy of some promotion for airport purposes by expressly prohibiting ''use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;'' and the notice of proposed policy reflects this distinction.

A number of commenters on the notice of proposed policy expressed the opinion that some kinds of promotion should be considered a legitimate use of airport revenue. ACI–NA/AAAE requested that FAA establish a ''safe harbor'' for certain promotional and marketing activities, perhaps based on a percentage of costs. Specific issues raised by the audits and the comments are:

What kinds of promotional and marketing activities are and are not considered legitimate operating costs of the airport under section 47107(b)?

Should the amount of expenditures on legitimate promotional and marketing activities be limited, as a matter of policy?

Proposed Policy

The FAA proposes to adopt a policy that expenditures for the promotion of an airport and marketing of the general services available at the airport are legitimate costs of airport operation. Promotion and marketing of the community or region, or promotional/marketing expenditures directed toward regional economic development rather than specifically toward promotion of the airport would not be considered an airport cost. Under the policy proposed, procurement of air transportation or air service by payment or direct subsidy, as opposed to promotional activities to encourage such service, would be considered regional economic promotion and would not be considered a cost of operating the airport. The FAA understands that the purpose of such a subsidy is essentially the same as the purpose of other promotional activities directed toward air service development. However, a distinction may be made between encouraging use of the airport, through advertising and other promotional activities or even through fee incentives, and simply buying increased use of the airport by paying an air carrier to operate aircraft. The FAA proposes to clarify in the final policy that this latter activity is ineligible for the use of airport revenues, because it cannot be considered a capital or operating cost of the airport.

Direct payments to carriers to provide service from a community's general funds or from a local chamber of commerce, for example, would not involve airport revenue and would not be subject to the revenue retention requirement.

The policy would not define specific limits on spending for promotional purpso9es, but would state that the FAA assumes that any expenditures for promotional and marketing costs would be reasonable in relation to the airport's financial situation. Disproportionately high costs for promotion and marketing could be reviewed to see if the expenditures actually qualified as ''airport costs'' under section 47107(b). The FAA could also consider whether excessive promotional expenditures should be taken into account in the award of discretionary grants.

Generally, the following would be considered costs of operating the airport:

(1) Costs of activities directed toward promoting public and industry awareness and use of airport facilities and services.

(2) Salary and expenses of persons engaged in efforts to promote air service at the airport.

The following practices would not be considered costs of operating the airport under section 47107(b):

(1) Expenditures for promotion of general economic development that is not specifically related to the airport.

(2) Direct subsidy of airline operations. For this purpose direct subsidies would be considered to be payments of airport funds to carriers for air service, and would not include waivers of fees or discounted landing or other fees during a promotional period or support for airline expenditures for advertising or marketing of service in specific markets.

The issue concerning direct subsidies to air carriers is one of several issues currently being addressed in a formal investigation, ''Investigation into Lehigh-Northampton Airport Authority's Air Service Development Program,'' FAA Docket No. 13–93–30, being conducted by the FAA under the procedures set forth in 14 CFR part 13, subpart F.

Formal complaints filed by Delta Air Lines, Inc., Northwest Airlines, Inc., United Air Lines, Inc., USAir, Inc., Atlantic Coast Airlines, Inc., Allegheny Airlines, Inc., Piedmont Airlines, Inc., and Midway Airlines, Inc., allege that the subsidization by the Authority of certain air service, in exchange for air carrier's agreement to provide service on certain schedules and at certain fares, constitutes unlawful diversion of airport revenue in violation of Federal law. The Authority asserts that it is traditional

and accepted industry practice for airport sponsors to expend airport revenues for air service marketing and promotion purposes, including direct subsidies of airline operations, and to pass some or all of those costs through to the airlines by allocation to various cost centers. It also argues that providing start-up carrier service reflects a legitimate business judgment by an airport operator to enhance air service and represents an appropriate airport operating cost.

To the extent that the supplemental notice of proposed policy would affect the Subpart F investigation, any issues considering those effects and the question of retroactive application of the policy would best be addressed within the context of the formal investigation.

III. Principles for Allocation of Indirect Costs

Discussion

The Notice of Proposed Policy did not discuss acceptable principles of indirect cost allocation, but several commenters requested guidance on cost allocation. Specifically, guidance was requested on approval of indirect sponsor charges calculated according to a federally approved cost allocation plan; allocation of shared costs; and the use of generally accepted accounting principles in lieu of Office of Management and Budget (OMB) Circular A–87, as recommended by the OIG.

Capital and operating costs of the airport under section 4710(b) may include indirect costs allocated to the airport. Local governments have great flexibility under generally accepted accounting principles (GAAP) to develop a plan for allocation of indirect costs among government departments, and the propriety of particular allocations has been a subject of OIG audits of airport revenue.

In several audits, the OIG has recommended that the FAA require that sponsors comply with OMB Circular A–87 in the allocation of indirect costs of airport operation. In response, the FAA has noted that A–87 applies by its terms only to the expenditure of funds on federally funded projects, and sponsors are under no legal obligation to use A–87 for cost allocation involving locally generated funds. FAA has agreed with the OIG that cost allocation by a sponsor should be applied consistently, and in compliance with the GAAP that apply to local government enterprise funds.

A–87 is apparently the only set of guidelines that provides specific guidance on indirect cost allocation for local government accounting systems. In the Denver audit, the OIG listed several principles derived from A–87 that the OIG believes ought to apply to the allocation of indirect costs by an airport. First, the general costs of government, such as costs of the city council, may not be allocated to the airport. Second, each item of cost must be treated consistently either as a direct or an indirect cost. Third, a local cost allocation plan must provide that all users of a service must be billed equally. This last is consistent with FAA Order 5190A, § 4–20(c)(ii), which states:

> If an indirect charge is levied against the airport in support of capital or operating expenses, the indirect charge must also be levied against other governmental cost centers in accordance with generally accepted accounting procedures and practices.

While the FAA continues to believe that the FAA cannot require A–87 in its entirety as a strict guide to the allowability of expenditures for capital and operating costs of an airport, we do believe the specific principles identified by the OIG are an appropriate construction of the revenue retention requirement.

Proposed Policy

The FAA proposes to make clear that allocation of indirect costs is allowable under 49 U.S.C. 47107(b), and that no particular method of cost allocation will be required, including OMB Circular A–87. However, it remains important that only capital and operating costs of the airport, airport system, and facilities directly and substantially related to air transportation may be allocated indirectly to the airport. To ensure that indirect costs are limited to allowable capital and operating costs, the FAA proposes to apply certain general principles and prohibitions to the allocation of costs. The proposed guidance would not limit significantly (if at all) the development of local cost allocation plans under OMB Circular A–87 or other state, local, or Federal cost allocation guidance, or interfere with the application of GAAP to airport accounting and cost allocation.

FAA would expect that a Federally approved cost allocation plan that complied with OMB Circular A–87 or other Federal guidance and was consistent with GAAP would be reasonable and transparent, and would generally meet the requirements of section 47107(b). However, the use of a Federally approved cost allocation plan does not rule out the possibility that a particular cost item allowed under that guidance would be in violation of the airport revenue retention requirement if allocated to the airport. For example, a local allocation plan may allocate general costs of government to various sponsor departments. This may not be inherently improper from an accounting standpoint, but would be considered by the FAA to be a diversion of airport revenue for general, non-airport purposes. Even under a plan developed in accordance with A–87, the calculation of depreciation costs or the allowance of contributions to or membership fees in charitable organizations could be inconsistent with the February 1996 notice of proposed policy and this supplemental notice.

The FAA proposes to require specifically that indirect cost allocations be applied consistently across departments to the sponsoring government agency, and not unfairly burden the airport account. Allocation of costs to comparable users, such as proprietary or enterprise accounts, must be applied in the same manner. The general sponsor cost allocation plan may not result in an overallocation to proprietary or enterprise accounts.

Also, the allocation of the general costs of the sponsoring government could not be allocated to the airport; however, this would not affect direct or indirect billing for actual services provided to the airport by local government.

IV. Use of Airport Land for Public Transit Facilities

Many commercial airports have some facility for the accommodation of public transit passengers, ranging from curbside terminal bus stops to dedicated airport stations for local mass transit systems. These on-airport facilities that are owned or operated by the airport are eligible for the use of airport revenue under section 47107(b). Similarly, the capital costs of such on-airport facilities may be eligible for the funds from Federal airport grants and passenger facility charges as part of an airport development project. The public transit systems at issue are publicly owned, not private, and are often subsidized by public funds. Terminal facilities at the airport, whether a curbside bus stop or a metro station, are generally provided only for the use of air passengers and airport visitors and employees traveling to and from the airport.

Public transit facilities are not aeronautical. As a result, the general rule of interpretation of the self-sustaining assurance would require the sponsor to charge commercial rates for the use of airport property by local transit systems. However, in determining the sponsor's obligation to develop a rate structure under the self-sustaining requirement, the FAA does

not believe that public transit facilities can be grouped either with commercial business enterprises or with non-aeronautical uses of the airport that have no direct benefit for air travel. Public transit facilities provide benefits to the airport by maximizing public access, lessening ground traffic congestion, and improving air quality. Therefore, the FAA believes that public transit facilities are more appropriately analogized to public roadways, which are also public facilities for transporting passengers, visitors, and employees to and from the airport.

Proposed Policy

Accordingly, the FAA proposes to consider the use of airport property for a public transit terminal, transit right-of-way, or related facilities at less than fair rental value to be consistent with the self-sustaining assurance. The exception would apply only to publicly-owned transit systems, and only to facilities necessary for the transportation of air passengers, airport visitors, and airport employees to and from the airport. For example, a maintenance/repair facility for transit buses would not need to be located at the airport, and a commercial lease rate would be required for any airport land used for this purpose.

In some cases the local public transit system may be owned and operated by another department of the sponsoring government agency. The FAA believes the same policy should apply to sponsor-owned transit systems as to systems owned by other jurisdictions, and a sponsor-owned transit facility located at the airport for the use of airport passengers, visitors, and employees, at a below-market lease rate, would not represent a diversion of airport revenue by the sponsor.

Note that a below-market rate is optional, not required; the policy would not prevent the sponsor from charging market rates. However, sponsors would have the freedom to charge below-market rates in order to derive environmental, mobility, and other benefits achieved through public transit to and from airports. Comments are requested on whether some compensation for the use of airport property should be required, or whether a lease at no cost or only nominal cost would be considered consistent with the self-sustaining requirement.

Policy Statement Concerning Airport Revenue

For the reasons discussed above, the Federal Aviation Administration is modifying the proposed policy concerning the use of airport revenue, as published in the Federal Register on February 26, 1996, as follows:

Policies and Procedures Concerning the Use of Airport Revenue

* * * * *

VII. Uses of Airport Revenue

A. Permitted Uses of Airport Revenue

Airport revenue may be used for:

1. The capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities, as discussed in paragraph VII.B.

2. Costs of activities directed toward promoting public and industry awareness of airport facilities and services, and salary and expenses of employees engaged in efforts to promote air service at the airport.

3. The repayment of the airport owner (which may or may not be the sponsor) of funds contributed by the owner for capital and operating costs of the airport and not heretofore reimbursed.

4. Purposes other than capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the sponsor and directly and substantially related to the air transportation of passengers or property, if the ''grandfather'' provisions of 49 U.S.C. 47107(b)(2) are applicable to the sponsor and the particular use. Examples of grandfathered airport sponsors may include, but are not limited to, a port authority or state department of transportation which owns or operates other transportation facilities in addition to airports, and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for non-airport purposes. Such sponsors may have obtained legal opinions from their counsel to support a claim of grandfathering. Previous DOT interpretations have found the following examples of pre-AAIA legislation to provide for the grandfather exception:

(a) Bond obligations and city ordinances requiring a five percent ''gross receipts'' fee from airport revenues. The payments were instituted in 1954 and continued in 1968.

(b) A 1955 state statute for the assessing of a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

(c) City legislation authorizing the transfer of a percentage of airport revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.

(d) A 1957 state statutory transportation program governing the financing and operations of a multi-modal transportation authority, including airport, highway, port, rail and transit facilities, wherein state revenues, including airport revenues, support the state's transportation-related, and other, facilities. The funds flow from the airports to a state transportation trust fund, composed of all ''taxes, fees, charges, and revenues'' collected or received by the state department of transportation.

(e) A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes but requires annual payments in lieu of taxes to several local governments and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, facilities of the authority, its expenses, reserves, and the payment in lieu of taxes fund.

B. Allocation of Indirect Costs

Indirect costs of sponsor services may be allocated to the airport, but the allocation must result in an allocation to the airport only of those costs which would otherwise be allowable under 49 U.S.C. 47107(b).

In determining whether an indirect cost allocation is allowable, the following principles apply:

1. Each allocation of cost and each procedure or plan for cost allocation should be transparent and justifiable and should be a matter of public record available to airport users and the general public. Allocation of costs is also expected to be consistent with generally accepted accounting principles (GAAP) applicable to local government and to enterprise funds, although GAAP guidance on cost allocation is limited.

2. Allocation of costs as allowed under OMB Circular A–87 or a

Federally approved local cost allocation plan will be considered to result in a reasonable and transparent cost allocation, but may still need to be reviewed to assure that allocation of specific cost items meets the special revenue retention requirements applicable to airport revenue under 49 U.S.C. 47107(b).

3. Each item of cost must be treated consistently either as a direct or an indirect cost, and the method of allocation must not permit a cost item to be charged both directly and indirectly.

4. A charge to the airport under a local cost allocation plan must be charged to all comparable users of a service equally.

5. The general costs of government, such as costs of the city council, may not be allocated to the airport.

C. Permitted Uses of Airport Property

Making airport property available at less than fair market rental for public community uses, for the purpose of maintaining positive airport-community relations, can be a legitimate function of an airport proprietor in operating the airport. Accordingly, in certain circumstances, providing airport land for such purposes (other than to the sponsor itself) will not be considered a violation of 49 U.S.C. 47107(b) or 47107(a)(13), which requires an airport proprietor to maintain an airport rate structure that makes the airport as self-sustaining as possible. Generally, the circumstances in which below-market use of airport land for community purposes will be considered consistent with the grant assurances are:

1. The community use of the property can be justified as benefiting the airport, and

2. The property involved would not reasonably be expected to produce substantial income at the time the community use is contemplated. The greater the difference between the fair rental value of the property and the actual amount of the lease, the greater the burden of showing an airport-related benefit.

Making airport property available at less than fair market rental for public transit terminals, right-of-way, and related facilities will not be considered a violation of 49 U.S.C. 47107(b) or 47107(a)(13) if the transit system is publicly owned and operated (or operated by contract on behalf of the public owner), and the facilities are directly related to the transportation of air passengers and airport visitors and employees to and from the airport.

D. Consideration of Lawful Diversion of Revenues in Awarding Discretionary Grants

Airport owners or operators who lawfully divert airport revenue in accordance with the ''grandfather'' provision should be aware that 49 U.S.C. 47115(f) requires the Secretary of Transportation to consider such usage as a factor militating against the approval of an application for discretionary funds when, in the airport's fiscal year preceding the date of application for discretionary funds, the Secretary finds that the amount of revenues used by the airport for purposes other than capital or operating costs exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

VIII. Prohibited Uses of Airport Revenue

Prohibited uses of airport revenue include but are not limited to:

A. Direct or indirect payments, other than payments that reflect the value of services and facilities provided to the airport, that are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government.

B. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

C. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government;

D. Payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates;

E. Loans of airport funds to a state or local agency at less than the prevailing rate of interest.

F. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than the amount that would be charged a commercial tenant, consistent with Paragraph VII.C. of this policy.

G. Impact fees assessed by a nonsponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities;

H. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses of airport property, unless the expenditure is directly to the operation or marketing of the airport;

I. Direct subsidy of air carrier operations.

J. Indirect payment for the general costs of government (but not including billing for specific services provided to the airport).

Issued in Washington, DC, on December 11, 1996.

Susan L. Kurland,

Associate Administrator for Airport.

[FR Doc. 96–32019 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–13–N

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA).

ACTION: Correction of Meeting Date in ''Date'' Category.

SUMMARY: Notice of the meeting of the Intelligent Transportation Society of America Board of Directors was published in the Federal Register on December 10, 1996, page 65101. The meeting date listed in the ''Summary'' category is correct. The ''Date'' category should read: ''The Board of Directors of ITS AMERICA will meet on Thursday, January 16, 1997, from 1 p.m.–5 p.m. [Eastern Standard Time].'' Issued on: December 13, 1996.

Jeffrey Lindley,

Deputy Director, ITS Joint Program Office.

[FR Doc. 96–32086 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–22–P

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3410

Applicant: CSX Transportation, Incorporated, Mr. E.G. Peterson, P.E.,

General Manager Signal Engineering, 500 Water Street (S/C J–370), Jacksonville, Florida 32202

CSX Transportation, Incorporated (CSXT) seeks approval of the discontinuance and removal of Viaduct Junction Interlocking, milepost BA–178.9, Cumberland, Maryland, involving main tracks of the Cumberland and Cumberland Coal Business Unit Divisions, Cumberland Terminal, Keystone, and Mountain Subdivisions, associated with permanent track and signal system arrangement revisions, installation of a traffic control signal system, and implementation of a Direct Traffic Control Block System (DTC) to govern train movements during construction and testing of changes. CSXT has implemented temporary DTC operations, as construction is underway and completion of the project is expected in November 1996, unless delayed by unforeseen circumstances.

The reasons given for the proposed changes are to improve train operations, replace the obsolete track arrangement, and eliminate the mechanical interlocking.

BS–AP–No. 3411

Applicant: CSX Transportation, Incorporated, Mr. E. G. Peterson, P.E., General Manager Signal Engineering, 500 Water Street (S/C J–370), Jacksonville, Florida 32202

CSX Transportation, Incorporated (CSXT) seeks approval of the discontinuance and removal of the traffic control signal system, on the main and siding tracks, between Fetner, milepost S164.8 and Hoffman, milepost S238.3, North Carolina, Florence Division, Aberdeen Subdivision, a distance of approximately 63.5 miles, and implementation of a Direct Traffic Control Block System (DTC) to govern train movements. CSXT has implemented DTC operations because of storm damage, and requests tolling the running of the six-month grace period provided in Part 235.7(4) for repair necessitated by catastrophic circumstances, pending FRA's decision.

The reason given for the proposed changes is that the signal system was damaged by Hurricane Fran and is no longer needed for current operations.

BS–AP–No. 3412

Applicant: Transportation, Incorporated, Mr. E. G. Peterson, P.E., General Manager Signal Engineering, 500 Water Street (S/C J–370), Jacksonville, Florida 32202

CSXTransportation, Incorporated (CSXT) seeks approval of the temporary discontinuance of all locations with signal systems, on all tracks, when a signal system is disturbed during construction and testing of changes, for a period of up to 30 days, and implement a temporary Direct Traffic Control Block System (DTC) to govern train movements during discontinuance of the signal system.

The reason given for the proposed changes is to clarify CSXT standard practice for operation during implementation and testing of changes.

BS–AP–No. 3413

Applicant: Louisville and Indiana Railroad, Mr. J. H. Sharp, General Superintendent, 2500 Old U.S. Highway 31, Jeffersonville, Indiana 47130

The Louisville and Indiana Railroad seeks approval of the proposed discontinuance and removal of the signal, between milepost 109 and milepost 110.1, near Clagg Tower, Louisville, Kentucky, consisting of the discontinuance and removal of 13 signals, and conversion of 8 power-operated switches to hand operation.

The reason given for the proposed changes is that the power-operated switches are no longer needed for the one to two switch crews per day operation, and the associated costs of the frequent maintenance of the antiquated equipment.

BS–AP–No. 3414

Applicant: Union Pacific Railroad Company, Mr. P. M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control signal system, on the single main track between Fremont, California, CPF29, milepost 29.3 and milepost 5.8, on the Canyon Subdivision, a distance of approximately 23.5 miles, and redesignation of the main track to an industrial switching lead.

The reason given for the proposed changes is that changes in train operations due to utilization of former Southern Pacific trackage has eliminated the need for signals on this trackage.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 30 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 10, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–31920 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 96–125; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1989 Alfa Romeo 164 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989 Alfa Romeo 164 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 1989 Alfa Romeo 164 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 January 17, 1997.

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.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to decide whether 1989 Alfa Romeo 164 passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1989 Alfa Romeo Milano. Champagne has submitted information indicating that the manufacturer of the 1989 Alfa Romeo Milano certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 1989 Alfa Romeo 164 to the 1989 Alfa Romeo Milano, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1989 Alfa Romeo 164, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1989 Alfa Romeo Milano that was offered for sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1989 Alfa Romeo 164 is identical to the certified 1989 Alfa Romeo Milano 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,* 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.*

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) inscription of the word ''Brake'' on the brake failure indicator lamp lens; (b) installation of a seat belt warning lamp which displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: replacement of the convex passenger side rear view mirror.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

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:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at each front designated seating position. Additionally, the petitioner states that the vehicle is equipped with combination lap and shoulder restraints that release by means of a single release button at each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1989 Alfa Romeo 164 must be reinforced or replaced with U.S.-model components to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a VIN plate must be installed on the vehicle so that it can be read from outside the left windshield pillar, and a VIN reference label must be installed on the edge of the door or latch post nearest the driver to meet 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: December 12, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–32082 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–129; Notice 1]

General Motors Corp.; Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that a small number of 1997 Model Year Pontiac Firebird vehicles fail to comply with the requirements of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) 108, ''Lamps, Reflective Devices and Associated Equipment,'' and has filed an appropriate report pursuant to 49 CFR part 573 ''Defect and Noncompliance Information Report.'' GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. 30118(d) and 30120(h) on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118(d) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.5.11(a)(2) of FMVSS No. 108 requires that any pair of lamps on the front of a passenger car, * * * other than parking lamps or fog lamps, may be wired to be automatically activated, as determined by the manufacturer of the vehicle, * * * provided that each such lamp is permanently marked ''DRL'' on its lens in letters not less than 3 mm high, unless it is optically combined with a headlamp.

GM's description of the noncompliance follows:

GM recently discovered that the combination park/turn signal lamp for the 1997 Pontiac Firebird vehicles had been released without the required ''DRL'' marking on the face of the lamp. The condition was corrected in September 1996. Approximately 4,500 vehicles were produced without ''DRL'' marked on the lamps.

GM supported its application for inconsequential noncompliance with the following reasons:

''The park/turn signal lamps meet all substantive requirements of FMVSS 108 for all functions; the sole noncompliance concerns the marking on the lamps for the voluntary DRL function.

''NHTSA adopted a lens marking requirement in the final rule promulgating DRL provisions because of a concern that state enforcement and vehicle inspection officials would not be able to ''distinguish between legal and illegal lamps and lamp combinations in the absence of marking.'' 58 FR 3504 (1993).

''While NHTSA adopted ''DRL'' as the required marking, it had considered an alternate proposal to adopt the ''Y2'' identification code specified in SAE Recommended Practice J759, Lighting Identification Code, January 1995 (SAE J579). The agency chose to require the ''DRL'' marking apparently not because of a state inspection concern, but because the SAE specifications were not identical to the federal ones. NHTSA reasoned that ''to adopt the SAE designation would be inaccurate and confusing because it would signify adoption of the SAE requirements * * *'' *Id.*

''In this instance, the subject vehicles include the ''Y2'' marking specified by SAE J759. Thus, while the lamps do not meet the explicit federal marking requirements, they do provide an indication to state officials that the lamps are intended to be used as DRLs. Moreover, the concern expressed by NHTSA in the final rule about the SAE designation does not apply here since the subject lamps meet the substantive requirements of both FMVSS 108 and SAE J759.

''The owner's manual for the Firebird explains that the DRL function is provided by the park/turn signal lamp. A state inspector who is unclear about the ''Y2'' designation would have alternate means of confirming that the turn signal portion of the lamp properly provides a DRL function.

''The population of subject vehicles is small, so any confusion created by the condition would be minimal.

''GM is not aware of any customer complaints concerning the absence of the ''DRL'' marking.''

Interested persons are invited to submit written data, views, and arguments on the application of GM, 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, SW. Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: January 17, 1997.

(49 U.S.C. 30118, delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 11, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–32031 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–128; Notice 1]

Nissan Motor Corporation, U.S.A.; Receipt of Application for Decision of Inconsequential Noncompliance

Nissan Motor Manufacturing Corporation USA, (Nissan) has determined that certain Nissan Sentra 4-door sedans fail to comply with the requirements of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) 108, ''Lamps, Reflective Devices and Associated Equipment,'' and has filed an appropriate report pursuant to 49 CFR part 573 ''Defect and Noncompliance Information Report.'' Nissan has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. 30118(d) and 30120(h) on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118(d) and 30120(h) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.1.1 of FMVSS No. 108 requires that each vehicle shall be equipped with certain lamps and reflective devices that shall be designed to conform to applicable SAE Standards or Recommended Practices referenced in the Standard. The stop lamp function of a rear combination lamp assembly must meet the photometric performance requirements of SAE J586 FEB84. To determine photometric performance requirements of SAE J586 FEB84, light intensity measurements are taken at 19 test points in a geometric grid. The grid is further broken down into five separate zones. The measured test point values that are located within a zone are summed to provide a zone total which must meet a minimum value. The stop lamp function of the rear combination lamp assemblies in the subject vehicles meet the requirements in Zones 1, 2, 4, and 5. However, in certain vehicles the minimum requirements in Zone 3 may not be met. The photometric results for the tested lamps of the Sentra 4-door sedan stop lamp function in Zone 3 are contained in the inconsequential application and are available in the National Highway Traffic Safety Administration Docket Section. The tail lamp function of the subject

combination lamps meet or exceed all test criteria and is in compliance with FMVSS No. 108.

Nissan's description of the noncompliance follows:

From December 11, 1995, through September 1996, Nissan manufactured approximately 65,000 1996 and 1997 model year Nissan Sentra 4-door sedans with stop lamp assemblies that do not comply with the photometric requirements in SAE J586 FEB84 as referenced in 49 CFR 571.108, S5.1.1. The Sentra 4-door sedan uses a combination stop and tail lamp assembly that was designed to conform to FMVSS 108 and the photometric requirements in SAE J586 FEB84 as referenced in 49 CFR 571.108, S5.1.1. J586 FEB84 defines 19 test points that must receive a specified range of light intensity. These test points are grouped into five zones and their intensities are summed to arrive at a total within each zone. Each zone's total has a required value, measured in candela, that must be met with none of the test points falling below 60% of its specified value.

Nissan stated that based on testing of production lamps, it was discovered that the summation of the five test points measured across Zone 3 did not meet the required stop lamp zone total of 380 candela in some of the lamps. All other zone totals were within FMVSS No. 108 specifications for the stop lamp function, and all FMVSS 108 criteria were met for the tail lamp function.

Nissan supported its application for inconsequential noncompliance with the following:

''Nissan [we] believe the failure of the stop lamp portion of the rear combination lamp assembly to meet photometric requirements in one of five zones is inconsequential to motor vehicle safety for the following reasons:

''A NHTSA sponsored study titled ''Driver Perception of Just Noticeable Difference[s] in [of Automotive] Signal Lamp Intensities'' [DOT HS 808 209, September 1994] demonstrated a change in luminous intensity of 25 percent or less is not noticeable by most drivers. Since all of the stop lamps Nissan tested, except one, were closer to the standard than 25 percent, the noncompliance is likely undetectable to the human eye. The single worst case sample was 25.5 percent below the standard in zone 3 but exceeds the photometric requirements of zones one, two, four, and five and meets or exceeds all other FMVSS and SAE requirements.

''The stop lamp is more than five times brighter than the tail lamp. A following driver will have no problem detecting the moment of brake application.

''The two combination lamp assemblies are supplemented by a Center High Mounted Stop Lamp (CHMSL). The Sentra's CHMSL illuminates at over two times the minimum standard to provide not only strong warning of brake application to the following driver, but also vehicles further back in the traffic flow. Nissan believes the supplementary benefit of the bright CHMSL helps to compensate for any diminished stop lamp performance.

''The combination tail/stop lamp assemblies are mounted high in the vehicle's body near the beltline. This mounting location provides excellent line of sight visibility to a following driver.

''Nissan is not aware of any accidents, injuries, owner complaints or field reports related to this condition.

''In similar situations NHTSA has granted the applications of various other petitioners. See, for example, 61 FR, January 22, 1996 (petition by General Motors); 56 FR 59971, November 26, 1991 (petition by Subaru of America); and 55 FR 37601, September 12, 1990 (petition by Hella Inc.).''

Interested persons are invited to submit written data, views, and arguments on the application of Nissan, 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, SW, Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: January 17, 1997.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 11, 1996.

L. Robert Shelton.

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–32030 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–124; Notice 1]

Philips Lighting Company, U.S.A.; Receipt of Application for Decision of Inconsequential Noncompliance

Philips Lighting Company (PLC) has determined that certain of its Model 9004 replacement halogen headlamp bulbs fail to comply with the requirements of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) 108, ''Lamps, Reflective Devices and Associated Equipment,'' and has filed an appropriate report pursuant to 49 CFR part 573 ''Defect and Noncompliance Information Report.'' PLC has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. 30118(d) and 30120(h) on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118(d) and 30120(h) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.1.1 of FMVSS No. 108 states in part that lamps, reflective devices, and associated equipment specified in Tables I and III and S7, as applicable, shall be designed to conform to the SAE Standards or Recommended Practices referenced in those tables. Table I applies to multipurpose passenger vehicles, trucks, trailers, and buses, 80 or more inches in overall width. Table III applies to passenger cars and motorcycles, and to multipurpose passenger vehicles trucks, trailers, and buses, less than 80 inches in overall width.

PLC's description of the noncompliance follows:

Some lamps have dimensions that do not comply with FMVSS No. 108 Figures 3–1, 3–3 and 3–8 of FMVSS No. 108. Some lamps do not comply with Paragraph S9 of FMVSS 108 ''Deflection test for replaceable light sources.'' The noncompliance is caused by process variations at the supplier's manufacturing site. The dimensional noncompliance and the bulb deflection noncompliance are described in Exhibits ''A'' and ''B'' of the application. These exhibits reflect the results of test data identifying several deviations from the FMVSS No. 108 specification.

PLC supported its application for inconsequential noncompliance with the following:

''Dimension K Low, Figure 3–1: The ''K'' low dimension defines the location of the low[er] beam filament within the lamp. In a random test sample, two lamps were found whose measurements

on this point were outside of the requirement by .002″ and .005″ respectively. This small deviation from the minimum limit is not material to any safety issue based upon PLC's experience with measurement of completed headlamp assemblies, which demonstrates that a deviation of this type and magnitude, will not affect safety. In fact, the condition is detectable only under precise testing conditions and is not even detectable by visual examination. The most likely consequence of the discrepancy—a problem with headlamp aim/beam quality—is more likely to be affected by other conditions, such as foreign debris (which can accumulate on seating plane surfaces during installation), automobile loading (a full trunk can significantly affect automobile alignment and alter headlamp aim), dirty headlamp lenses or weathering of headlamp lenses than by the failure to comply precisely with the standard. This may explain why PLC has not received any complaints from end users or state inspection agencies concerning conditions related to this deviation from the standard.

''Dimension V, Figure 3–1: This dimension defines the length of the 9004 replacement lamp electrical terminals (pins). The terminals on some test lamps were found to be slightly below the minimum length requirement. However, all test lamps functioned properly and made good electrical contact with the automobile lighting system connectors. The electrical connectors locked in place as designed and no difficulty was encountered with installation or electrical operation. This noncompliance does not affect lamp operation or performance (i.e., aim or beam quality) and is thus inconsequential and not safety-related. Again, PLC has not received any complaints from any party concerning conditions related to this deviation from the standard.

''Dimension F, Figure 3–3: The ''F'' dimension defines the location of the terminal cavity in relation to the centerline of the lamp. Some test lamps had terminal cavities that were from .002″ to .012″ below the minimum specification for location. The cavity size (opening) is within specification limits in all respects. The automobile lighting system electrical connector fits into the cavity freely and locks in place as designed. This noncompliance does not affect headlamp system performance in any way (i.e., aim or beam quality), and PLC has not received any complaints from any party concerning conditions related to this deviation from the standard. Thus this deviation also has no adverse effect on safety and is inconsequential.

''Dimension J, Figure 3–3: This dimension defines the location of the lower electrical terminals (pins) in relation to the lamp centerline. One of the test lamps measured slightly above the upper specification limit for this characteristic. Since the ''R'' dimension and ''S'' dimension on the same lamp are within limits, the noncompliance could be related to measurement error or handling damage. However, all test lamps functioned properly and made good electrical contact with the automobile lighting system connectors. The electrical connectors locked in place as designed and no difficulty was encountered with installation or electrical operation. This noncompliance also does not affect lamp operation or performance (i.e., aim or beam quality), and PLC has not received any complaints from any party concerning conditions related to this deviation from the standard. This deviation also has no adverse effect on safety and is inconsequential.

''Bulb Deflection, Figure 3–8: PLC understands that the bulb deflection criteria for the 9004 replacement headlamp bulb are included in the FMVSS No. 108 to ensure that bulbs which are handled by automated or robotic insertion equipment are strong enough to withstand the stresses that such equipment may put on the bulb. PLC agrees that deflection criteria for bulbs inserted by automated/robotic equipment are necessary and the criteria defined by FMVSS No. 108 are reasonable for bulbs that are inserted by automated/robotic equipment. However, because PLC currently furnishes 9004 replacement headlamp bulbs for aftermarket use only, all 9004 replacement bulbs that PLC furnishes are installed by human beings. Manual insertion of the 9004 replacement bulb does not pose a risk that permanent deflection will result because of the much lower forces that are exerted on the bulb when robotic insertion is not involved.''

''When inserting a replacement bulb into the headlamp housing the glass bulb is placed through an opening in the back of the reflector which is approximately two times larger than the bulb diameter. During manual insertion, little to no force is placed on the glass bulb. Force during manual insertion is placed on the plastic base and not the glass bulb. Nor are there other sources of stress that can cause deflection of the bulb. Common road hazards such as large potholes cannot cause sufficient force to equal that required to permanently deflect the bulb (which is also called a ''burner'') * * *. While the bulb is in the headlamp housing, unacceptable permanent deflection can be caused only by force equal to that which would be experienced in a high speed collision. No bulbs exhibited deflection or distortion prior to the test or after manual insertion, confirming that this noncompliance is inconsequential and does not constitute a potential safety hazard for bulbs furnished to the aftermarket. PLC has not received any complaints from any party concerning conditions related to this deviation from the standard.''

SAE Tolerances: PLC notes that the 1996 edition of the Society of Automotive Engineers (SAE) Ground Vehicle Lighting Standards Manual, specifically HS–34, provides for greater dimensional tolerances than those contained in FMVSS No. 108. At least two of those tolerances are relevant to PLC's Petition for Exemption, as they involve two of the dimensions for which PLC's 9004 replacement bulbs do not comply with FMVSS No. 108:

Dimension	FMVSS No. 108 Tol.	SAE Tol.
V (Fig. 3–1)	+/− 0.10 mm ..	+/− 0.50 mm.
F (Fig. 3–3)	+/− 0.10 mm ..	+/− 0.15 mm''.

Interested persons are invited to submit written data, views, and arguments on the application of PLC, 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, SW, Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: January 17, 1997.

(49 U.S.C. 30118 and 30120, delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 11, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–32029 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–59–P

Privacy Act of 1974: Notice To Alter a System of Records

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of Transportation proposes to alter a system of records notice in its inventory of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The alteration will be effective on January 17, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, U.S. Department of Transportation, Office of Information Resource Management (M–30), 400 7th Street, SW, Washington, DC. 20590.

FOR FURTHER INFORMATION CONTACT: Crystal M. Bush, Privacy Act Coordinator, U.S. Department of Transportation, Washington, DC 20590. Telephone: (202) 366–9713.

SUPPLEMENTARY INFORMATION: An altered system report, as required by 5 U.S.C 552a(r) of the Privacy Act was submitted on November 26, 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. The Department of Transportation proposes to alter DOT/NHTSA 413, Odometer Rollback System to be renamed the Odometer Fraud Data Base Files System. This system has been expanded and its current purpose is to maintain files containing information on suspects, defendants, witnesses, informants, motor vehicles, automobile dealers, victims and other related data obtained through Federal grand jury subpoenas. The names and other personal information would be routinely disclosed only to Federal and State law enforcement personnel to facilitate and support criminal prosecutions by the Attorney General of the United States and to victims under 42 U.S.C. 10606(b)(7).

Pursuant to the provisions of 49 U.S.C. 32706, the Office of Odometer Fraud investigates tampering with motor vehicle odometers in order to protect the public regarding the purchase of motor vehicles with altered or reset odometers. The Odometer Fraud investigators use this information to support Federal criminal prosecutions. In order to comply with the statutory investigatory requirement, the routine release of this information to the Federal and State law enforcement personnel and victims is necessary and not unreasonably onerous on the privacy of individuals.

The data in the system are protected by a locked file cabinet and restricted electronic access. The data is maintained by the Office of the Associate Administrator for Safety Assurance. Only personnel of this office, who are assigned to work on odometer fraud investigations, will have access to the data.

The use of the system of records is compatible with the purpose for which it was collected. The proposed alteration of this system of records will not effect the other branches of the Federal Government or any state or local government. No change in existing agency rules are required.

The OMB control number for the Odometer Complaint Form is 2127–0047. The expiration date for this OMB number is September 30, 1998.

Dated: December 11, 1996.

Crystal M. Bush,

Privacy Act Coordinator.

DOT/NHTSA 413

SYSTEM NAME:

Odometer Fraud Data Base Files System.

SECURITY CLASSIFICATION:

Nonpublic.

SYSTEM LOCATION:

Department of Transportation (DOT), National Highway Traffic Safety Adm. (NHTSA) Safety Assurance (NSA–01), Odometer Fraud Staff (NSA–20), 400 Seventh Street, SW, Room 5321, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Suspects, defendants, witnesses, informants, automobile dealers, and victims of odometer fraud.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files containing information on suspects, defendants, witnesses, informants, motor vehicles, automobile dealers, victims and other related data obtained through Federal grand jury subpoenas. Information may contain addresses, dates of birth, financial data, criminal history records, business records, and numerous other data obtained through Federal grand jury subpoenas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 32706.

PURPOSES(S):

The agency is authorized to conduct investigations of odometer fraud for referral to the U.S. Department of Justice for civil and criminal prosecution. In order to obtain necessary evidence to support these prosecutions, evidence is obtained from numerous sources, including the public, the automobile industry and law enforcement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Files are maintained for use in criminal investigations and to support criminal prosecutions by the U.S. Department of Justice. Files are used only by members of the Odometer Fraud Staff. Data is released only to authorized State and Federal law enforcement agencies and personnel and to victims under 42 U.S.C. 10606(b)(7). See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder storage and in electronic database.

RETRIEVABILITY:

By individual name, dealer name, complainant name, case number and vehicle identification number.

SAFEGUARDS:

Locked files and restricted electronic access.

RETENTION AND DISPOSAL:

Retained for five years after case is closed, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, National Highway Traffic Safety Administration, Attn: Chief, Odometer Fraud Staff, 400 Seventh Street, SW, Room 6208, Washington, DC 20590

NOTIFICATION PROCEDURE:

Same as ''System manager'' above.

RECORD ACCESS PROCEDURES:

Same as ''System manager'' above.

CONTESTING RECORD PROCEDURES:

Same as ''System manager'' above.

RECORD SOURCE CATEGORIES:

All information has been obtained from victims, automobile dealers, banks, State motor vehicle departments, State and Federal law enforcement agencies, and other sources used during the course of criminal investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

5 U.S.C. 552a(j)(2).

[FR Doc. 96–32025 Filed 12–17–96; 8:45 am]

BILLING CODE 4910–62–P

Surface Transportation Board

[STB Docket No. AB–364 (Sub-No. 3X)]

Texas Northeastern Division, Mid-Michigan Railroad, Inc.—Discontinuance of Service Exemption—in Red River and Bowie Counties, TX

[STB Docket No. AB–3 (Sub-No. 137X)]

Missouri Pacific Railroad Company—Abandonment Exemption—in Red River and Bowie Counties, TX

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 10903 the discontinuance of service by Texas Northeastern Division, Mid-Michigan Railroad, Inc., over, and the abandonment by Missouri Pacific Railroad Company of, a 38.5-mile rail line extending from milepost 23.0 at New Boston, to the end of track at milepost 61.5 near Clarksville, in Red River and Bowie Counties, TX, subject to historic preservation and standard labor protective conditions.

DATES: The exemption will be effective January 17, 1997 unless it is stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA [1] under 49 CFR 1152.27(c)(2) and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by December 30, 1996; petitions to stay must be filed by January 2, 1997; requests for a public use condition under 49 CFR 1152.28 must be filed by January 7, 1997; and petitions to reopen must be filed by January 13, 1997.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Docket No. AB–364 (Sub-No. 3X) and STB Docket No. AB–3 (Sub-No. 137X) must be filed with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, NW., Washington, DC 20423; in addition, a copy of all pleadings must be served on petitioner's representative: Michael W. Blaszak, Esq., 211 South Leitch Avenue, LaGrange, IL 60525–2162.

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

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC NEWS & DATA, INC., 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 4, 1996.

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

Vernon A. Williams,

Secretary.

[FR Doc. 96–32096 Filed 12–17–96; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C. 2d 164 (1987).

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 4–96

Question Presented

Are the provisions of 38 U.S.C. 110 violated when two service-connected disabilities, which have been erroneously rated as one disability at or above a specific evaluation for 20 or more years, are rerated as two separate disabilities such that the combination of their evaluations equals or exceeds the prior specific evaluation?

Held

The provisions of 38 U.S.C. 110, which prohibit a disability that has been continuously rated at or above any evaluation for 20 or more years for compensation purposes from thereafter being rated at less than such evaluation, are not violated when two or more service-connected disabilities, which have been erroneously rated as one disability (but not as the result of the combination of known or determinable separate disability evaluations under 38 C.F.R. 4.25), at or above a specific evaluation for at least 20 years, are rerated as separate disabilities such that the combination of their evaluations equals or exceeds the prior specific evaluation.

Effective Date: July 18, 1996.

VAOPGCPREC 5–96

Question Presented

a. Is the Department of Veterans Affairs (VA) authorized to directly pay an attorney's fee from past-due benefits in a case where the attorney's representation is limited solely to the proceedings before the Court of Veterans Appeals (CVA) and the benefits are awarded to the veteran by VA following a CVA remand for additional development?

b. In a case where an attorney's representation is limited to the CVA proceedings and VA grants benefits to the veteran following a CVA remand for additional development, must the fee agreement specifically mention that it includes benefits awarded for dependents for the attorney to be paid

directly by VA out of a past-due amount paid to the veteran for dependents?

c. Whether a fee agreement must be between the beneficiary of a secondary benefit, e.g., a beneficiary entitled to receive past-due dependent educational assistance (DEA) benefits, and the attorney in order for VA to directly pay attorney fees from the beneficiary's award of past-due benefits?

Held

a. VA is authorized to directly pay an attorney's fee from past-due benefits in an appropriate case where the attorney's representation is limited solely to the CVA proceedings and the benefits are awarded to the veteran by VA following a CVA remand for additional development.

b. Depending on all of the circumstances involved, it may not be necessary for a fee agreement to specifically mention that it includes dependency benefits for an attorney to be paid directly by VA out of a past-due amount paid to the veteran for dependents.

c. A fee agreement must be between the beneficiary of a secondary benefit and an attorney in order for VA to directly pay the attorney a fee from the beneficiary's award of past-due secondary benefits.

Effective Date: July 24, 1996.

VAOPGCPREC 6–96

Question Presented

a. Under what circumstances must the Board of Veterans'' Appeals (Board) address the issue of entitlement to an extraschedular rating under 38 C.F.R. 3.321(b)(1) or 38 C.F.R. 4.16(b) in reviewing claims for an increased evaluation for a service-connected disability or a total disability rating for compensation based on individual unemployability?

b. In circumstances where the issue of entitlement to an extraschedular rating under § 3.321(b)(1) or 4.16(b) must be addressed, what procedure should the Board follow when the issue was not addressed by the regional office (RO)? Does the Board have jurisdiction over extraschedular claims raised for the first time by the record or the appellant before the Board?

c. Is the issue of entitlement to an extraschedular evaluation inextricably intertwined with the underlying claim for an increased evaluation or a total disability rating based on individual unemployability, such that the issues may not be separated by the Board for purposes of taking final action on appeal?

d. If the appellant or the representative raises the issue of a rating under § 3.321(b)(1) or 4.16(b) but submits no argument or evidence, and the record on appeal contains no evidence that would make such a claim plausible, may the Board dismiss the claim as not well-grounded or conclude that the RO's failure to address the issue of an extraschedular evaluation was harmless error because the claim is not plausible?

Held

a. The Board is required to address the issue of entitlement to an extraschedular rating under 38 C.F.R. 3.321(b)(1) only in cases where the issue is expressly raised by the claimant or the record before the Board contains evidence of ''exceptional or unusual'' circumstances indicating that the rating schedule may be inadequate to compensate for the average impairment of earning capacity due to the disability. The Board is required to address the issue of entitlement to a total disability rating based on individual unemployability (TDIU rating) under 38 C.F.R. 4.16(b) only in cases where the issue is expressly raised by the claimant or the record before the Board contains evidence that the appellant may be unable to secure or follow a substantially gainful occupation due to his or her service-connected disability.

b. When the issue of entitlement to an extraschedular rating or a TDIU rating for a particular service-connected disability or disabilities is raised in connection with a claim for an increased rating for such disability or disabilities, the Board would have jurisdiction to consider that issue. If the Board determines that further action by the RO is necessary with respect to the issue, the Board should remand that issue.

c. When the issue of entitlement to an extraschedular rating or a TDIU rating arises in connection with an appeal in an increased rating case, the Board is not precluded from issuing a final decision on the issue of an increased schedular rating and remanding the extraschedular-rating or TDIU-rating issue to the RO.

d. Where the appellant has raised the issue of entitlement to an extraschedular rating or a TDIU rating but the record contains no evidence which would render the claim plausible, the Board may, subject to the considerations expressed in VAOPGCPREC 16–92 and *Bernard* v. *Brown*, determine that the referral to the appropriate officials for consideration of an extraschedular rating or a TDIU rating is not warranted.

Effective Date: August 16, 1996.

VAOPGCPREC 7–96

Question Presented

Under what circumstances does an increase in an individual's indebtedness result from ''a separate and distinct transaction'' for purposes of notification of the right to request a waiver of indebtedness?

Held

Notification of waiver rights is necessary when an increase in indebtedness is based on circumstances not considered in computation of the original indebtedness. Notification is not required when an increase is based on the addition of interest to a debt or on a technical correction concerning the amount of the original indebtedness.

Effective Date: September 9, 1996.

VAOPGCPREC 8–96

Question Presented

May the Department of Veterans Affairs (VA) pay the amounts represented by several benefit checks received by the guardian of certain VA beneficiaries but not negotiated prior to the guardian's death, and, if so, to whom should payment be made?

Held

Section 5122 of title 38, United States Code, does not apply to checks received by a guardian on behalf of a VA beneficiary but not negotiated prior to the guardian's death. Where such checks have been canceled pursuant to the Competitive Equality Banking Act of 1987, individuals claiming entitlement to the proceeds of such checks must file a claim for those amounts with VA. Any such claim not filed within six years after the claim accrues is barred by 31 U.S.C. 3702(b)(1).

Effective Date: September 26, 1996.

VAOPGCPREC 9–96

Question Presented

a. Whether VA disability compensation must be offset to recoup the amount of Reservists' Special Separation Pay (RSSP) received by a veteran under Public Law 102–484?

b. Whether VA disability compensation must be offset to recoup the amount of Reservists' Involuntary Separation Pay (RISP) received by a veteran under Public Law 102–484?

Held

a. The Department of Veterans Affairs (VA) is not authorized under section 4416(b) of Public Law No. 102–484 to offset VA disability compensation to recoup the amount of Reservists' Special

Separation Pay (RSSP) received by a veteran pursuant to section 4416(b).

b. Section 4418(c) of Public Law 102–484 which provides that the provisions of section 1174(h)(2) are applicable to Reservists' Involuntary Separation Pay (RISP) and 38 C.F.R. 3.700(a)(5) require VA to offset disability compensation to recoup the amount of RISP received by a veteran pursuant to section 4418 provided that the VA compensation is for a disability incurred in or aggravated by service prior to the date of receipt of the RISP.

Effective Date: October 11, 1996.

VAOPGCPREC 10–96

Question Presented

Does the action of the Secretary of a Service Department under 10 U.S.C. 874(b), substituting an administrative discharge for a discharge or dismissal executed in accordance with the sentence of a general court-martial, remove the statutory bar to benefits under 38 U.S.C. 5303(a)?

Held

An upgraded discharge issued pursuant to 10 U.S.C. 874(b) does not remove the statutory bar to benefits under 38 U.S.C. 5303(a) for individuals discharged or dismissed by reason of the sentence of a general court-martial.

Effective Date: October 28, 1996.

VAOPGCPREC 11–96

Question Presented

1. Does section 8052 of the Omnibus Budget Reconciliation Act of 1990 prohibit payment of dependency and indemnity compensation under 38 U.S.C. 1310 for a veteran's death where the disability from which the veteran died resulted from the veteran's alcohol or drug abuse, but service connection of the disability was established for disability compensation purposes based on a claim filed on or before October 31, 1990?

2. Does section 8052 of the Omnibus Budget Reconciliation Act of 1990 prohibit payment of dependency and indemnity compensation under 38 U.S.C. 1318 where the disability that was continuously rated totally disabling for an extended period immediately preceding a veteran's death resulted from the veteran's alcohol or drug abuse, but service connection of the disability was established for disability compensation purposes based on a claim filed on or before October 31, 1990?

Held

Section 8052 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, section 8052, 104 Stat. 1388, 1388–351, applicable to claims filed after October 31, 1990, precludes an injury or disease that is a result of a person's own abuse of alcohol or drugs from being considered incurred in line of duty and, consequently, precludes resulting disability or death from being considered service connected. Section 8052 therefore prohibits the payment of dependency and indemnity compensation based on a veteran's death resulting from such a disability or on the basis that the veteran was in receipt of or entitled to receive compensation for such a disability continuously rated totally disabling for an extended period immediately preceding death. Even where service connection established for compensation purposes in a claim filed on or before October 31, 1990, for a disability resulting from a veteran's own alcohol or drug abuse has been in effect for ten or more years and would therefore generally be protected from severance under the provisions of 38 U.S.C. 1159 and 38 C.F.R. 3.957, section 8052 prohibits the payment of dependency and indemnity compensation in a claim filed after October 31, 1990, based on a veteran's death resulting from such a disability or on the basis that the veteran was in receipt of or entitled to receive compensation for such a disability continuously rated totally disabling for an extended period immediately preceding death.

Effective Date: November 15, 1996.

VAOPGCPREC 12–96

Question Presented

Whether 38 C.F.R. 3.700(a)(3) or any other legal authority requires withholding of a veteran's Department of Veterans Affairs (VA) disability compensation to recoup the amount of nondisability severance pay received by the veteran from the veteran's armed forces component upon discharge from military service.

Held

Section 1174(h)(2) of title 10, United States Code, which provides that there shall be deducted from any disability compensation under laws administered by the Department of Veterans Affairs (VA) an amount equal to the amount of separation pay received under section 1174 or severance pay or readjustment pay received under any other provision of law, requires that VA recoup from a veteran's VA disability compensation the amount of ''nondisability severance pay'' received by the veteran under section 631 of Public Law 96–513. The statement in 38 C.F.R. 3.700(a)(3), which reflects the statute requiring recoupment of disability severance pay, that ''[t]here is no prohibition against payment of compensation where the veteran received nondisability severance pay'' is of no effect as it is inconsistent with 10 U.S.C. 1174(h)(2).

Effective Date: November 21, 1996.

VAOPGCPREC 13–96

Question Presented

a. Does the protection of service connection provided by 38 U.S.C. 1159 apply to disabilities compensated under 38 U.S.C. 1151?

b. Is termination of entitlement to benefits under 38 U.S.C. 1151 subject to the requirements of 38 C.F.R. 3.105(d)?

Held

a. The protection of service connection under 38 U.S.C. 1159 is not applicable to disabilities compensated under 38 U.S.C. 1151.

b. Termination of entitlement to benefits under 38 U.S.C. 1151 is not subject to the requirements of 38 C.F.R. 3.105(d), regarding severance of service connection, but is subject to similar requirements under 38 C.F.R. 3.103 and 3.105(a).

Effective Date: November 25, 1996.

VAOPGCPREC 14–96

Questions Presented

a. May the Secretary pay attorney fees from the lump-sum proceeds of a National Service Life Insurance (NSLI) policy due to the beneficiary of that policy pursuant to authority granted in 38 U.S.C. 5604(d) to directly pay attorney fees from past-due benefits?

b. Where the proceeds of a NSLI policy are payable to the beneficiary in monthly installments, may the Secretary withhold a portion of each payment to the beneficiary for purposes of direct payment of attorney fees?

Held

a. The statutory and regulatory provisions applicable to payment of attorney fees from past-due benefits, codified at 38 U.S.C. 5904 (c) and (d), and 38 C.F.R. § 20.609(h), do not distinguish payment of attorney fees in insurance cases from other types of benefit appeals. The Secretary may, therefore, directly pay attorney fees from the proceeds of a National Service Life Insurance (NSLI) policy payable in a lump sum, whenever the requirements for direct payment of attorney fees from past-due benefits contained in 38 U.S.C. 5904(c) and (d) are met.

b. The Secretary may directly pay attorney fees from the proceeds of a

NSLI policy payable in monthly installments only from the past-due installments which accrued between the date the policy matured and the date of the decision granting the proceeds to the beneficiary, provided all other requirements for the direct payment of attorney fees from past-due benefits contained 38 U.S.C. 5904 (c) and (d) are met.

Effective Date: November 25, 1996.

By Direction of the Secretary.

Mary Lou Keener,

General Counsel,

[FR Doc. 96–32059 Filed 12–17–96; 8:45 am]

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Federal Register

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December 18, 1996

Part II

Department of the Interior

Bureau of Reclamation

43 CFR Parts 426 and 427

Acreage Limitation and Water Conservation; Final Rule and Advance Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Parts 426 and 427

RIN 1006–AA32

Acreage Limitation and Water Conservation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This final rule retitles and revises the Rules and Regulations for Projects Governed by Federal Reclamation Law and moves the water conservation provisions to a new part. These rules replace prior rules on the administration of the Reclamation Reform Act of 1982 (RRA). The final rule, among other things, incorporates existing policies that are not included in the prior rules and raises certain certification and reporting thresholds. Reclamation has rewritten and reorganized these regulations to make them clearer and less administratively burdensome, while maintaining compliance with and achievement of programmatic goals.

EFFECTIVE DATES: The effective date of revised part 426, Acreage Limitation Rules and Regulations, and the new part 427, Water Conservation Rules and Regulations, is January 1, 1998. The amendment to current § 426.10 is effective on January 1, 1997. The text for the amendment is located at the end of this document.

ADDRESSES: A copy of all comments received on the proposed rules are on display to the public in the Bureau of Reclamation Library, Denver Federal Center, Building 67, Room 167, 6th and Kipling, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: Austin Burke, Director, Program Analysis Office, Bureau of Reclamation, P.O. Box 25007, Mail Code D–5000, Denver, Colorado 80225–0007, telephone (303) 236–3292.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. § 553(d)(1) and (3) the amendment to § 426.10, which pertains to submittal of certification and reporting forms, may take effect less than thirty days after the date of publication in the Federal Register. Section 553(d)(1) permits a substantive rule, which grants or recognizes an exemption or relieves a restriction, to take effect less than thirty days after the date of publication. Section 553(d)(1) applies to the provisions amending current § 426.10, as the amendment excepts certain individuals and entities holding only a relatively small amount of land from having to submit forms to Reclamation.

Moreover, § 553(d)(3) could also permit the amendment to take effect on January 1, 1997. Section 553(d)(3) of the Administrative Procedure Act permits final rules to take effect less than thirty days after publication upon a showing of good cause. For many farmers in the western United States, including many landholders who receive Reclamation project water, the water year begins on January 1, 1997. If the amendment to the forms provisions was to take effect thirty or more days after the date of publication, these landholders would have to submit reporting forms which other landholders, whose water year begins later in the year, would not. Thus, in order to apply the same rules and regulations to all landholders receiving Reclamation project water and to ensure fairness, the amendment to the forms provisions will take effect on January 1, 1997.

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Introduction

These rules and regulations govern the Bureau of Reclamation's (Reclamation) westwide implementation and administration of the Reclamation Reform Act of 1982. The rules retitle and revise prior rules on acreage limitation and place water conservation rules in a separate CFR part.

Summary of Changes

These final rules implement and interpret the Reclamation Reform Act of 1982, as amended, consistent with Reclamation's role of managing and protecting water resources. The final rules, among other things, incorporate existing policies that are not included in the prior rules and raise certain certification and reporting thresholds. Reclamation has rewritten and reorganized these regulations to make them clearer and easier to administer.

Reclamation published proposed rules in the Federal Register (60 FR 16922, Apr. 3, 1995).

This section summarizes the most significant differences between the prior rules, proposed rules, and final rules. A section-by-section analysis, found later in this preamble, provides a more detailed description of the changes.

Certification and Reporting Thresholds

Landholders whose total westwide landholding is equal to or less than the certification and reporting thresholds, as presented below, are exempt from the annual RRA forms submittal requirements.

Acreage limitation status	Prior rule	Proposed rule		Final rule	
		Category 1	Category 2	Category 1	Category 2
Prior law	40	40	40	40	40
Qualified recipient	40	240	80	240	80
Limited recipient:					
Received water before 10/1/81	40	80	5	40	40
Did not receive water before 10/1/81	40	5	5	40	40

Both the proposed and final rules provide that all districts will be Category 2 unless certain criteria are met. Under the proposed rule criteria, the district had to: (1) Be subject to the discretionary provisions of the RRA; (2)

enter into a resources management ''partnership'' with Reclamation; and (3) not have delinquent financial obligations owed to the United States. Under the final rule criteria, the district must : (1) be subject to the discretionary provisions of the RRA; and (2) not have delinquent financial obligations owed to Reclamation. The ''partnership'' criterion is not included in the final rule.

Application of the Nonfull-Cost Entitlement

Under the prior rule, the following were examined to determine if a farming arrangement was considered to be a lease for acreage limitation purposes:

Who assumes the economic risk in the farming operation?

Who retains the right to the use or possession of the land being farmed?

Who is responsible for payment of the operating expenses?

Who is entitled to receive the profits of the farming operation?

Under the proposed rule, a farming arrangement would have been considered to be a lease for acreage limitation purposes if possession of the lessee's land was partially or wholly transferred to the ''lessee.'' Economic risk was relegated to simply be an indicator of possession.

In the final rule, the criteria found in the prior rule are restated and clarified. Any farming arrangement under which the economic risk and the use or possession of the land has partially or wholly transferred to a party other than the landowner will be considered to be a lease. Once again, who is responsible for payment of operating expenses and who is entitled to receive the profits from the farming operation have been highlighted as indicators of use or possession and economic risk. Unlike the prior rule, this provision is included in the definitions section rather than in the leasing and full-cost pricing section.

Nonresident Alien and Foreign Entity Entitlements

Under the prior, proposed, and final rules, certain applications of the acreage limitation provisions for nonresident aliens and entities not established under State or Federal law (foreign entities) are constant. Specifically:

- Nonresident aliens and foreign entities are eligible to receive Reclamation irrigation water on directly held land in prior law districts only as prior law recipients.
- Land held directly by nonresident aliens and foreign entities in discretionary provision districts is ineligible to receive Reclamation irrigation water.

The difference in application between the three versions of the rule is centered on land held indirectly by nonresident aliens and foreign entities, primarily in discretionary provision districts. Under the prior rules, a nonresident alien could hold up to 960 acres indirectly in a discretionary provision district and receive Reclamation irrigation water. The prior rules do not address holdings by foreign entities. Reclamation policy has been that any land held by a foreign entity in a discretionary district is ineligible to receive Reclamation irrigation water.

Under the proposed rules, both nonresident aliens and foreign entities would be limited to qualifying as prior law recipients with the associated acreage limitations even if they held land indirectly through a domestic entity.

Under the final rules, the prior law entitlements still serve as base entitlements for all nonresident aliens and foreign entities. However, if a nonresident alien is a citizen of, or a foreign entity is established in, a country that has certain treaty or other international agreements with the United States, they will be treated as a United States citizen or as an entity established under State or Federal law for acreage limitation purposes. Accordingly, they may elect to conform to the discretionary provisions and receive the entitlements applicable to qualified and limited recipients for land that they hold indirectly.

Type of Contracts Considered To Be Additional and Supplemental Benefits

Under the prior rules, the general criteria for determining whether a contract action will be considered an additional or supplemental benefit are provided. The provision also lists specific types of contract actions which Reclamation does not consider to provide such benefits. If a district's contract action provides an additional or supplemental benefit, then the district must conform to the discretionary provisions.

Under the proposed rules, the general criteria would have been modified to include specific types of contract actions which Reclamation would consider as providing supplemental or additional benefits. Under the prior rule, some of these contract actions did not require conformance to the discretionary provisions, while for others application of that requirement was not clear.

The final rules retain the more general criteria provided in the prior rules with modifications to remove provisions that are no longer applicable. No policy change is intended.

Application of the RRA to Religious or Charitable Organizations

Under the prior rule, a subdivision of a religious or charitable organization that is subject to the discretionary provisions is treated as an individual qualified recipient if certain RRA criteria are met. If any of the criteria are not met by either the central organization or any of its subdivisions, the entire organization, including all subdivisions, is treated as one limited recipient.

Under the proposed and final rules, a subdivision of a religious or charitable organization that is subject to the discretionary provisions is treated as an individual qualified recipient if the same criteria as found in the prior rules are met. If any of the criteria are not met, only that subdivision, and any subdivision of it, will be affected. Reclamation will determine the acreage limitation status (qualified or limited recipient) of such a subdivision based on the total number of members of that subdivision.

Application of Class 1 Equivalency

Under the prior, proposed, and final rules, Class 1 equivalency factors are based on the productive potential of Class 2 or 3 land as compared to Class 1 land within the same district. The proposed rule added a study of potential toxic or hazardous return flows to any reclassification or Class 1 equivalency factor determination activity. Under the proposed rule if Reclamation determined that soils could contribute to toxic or hazardous return flows, then the land so identified would not be eligible for application of the Class 1 equivalency factors. The final rule continues the policy of the prior rule. The final rule does not include the proposed rule provision to conduct a study of potential toxic or hazardous return flows and use the results of that study as a factor in determining Class 1 equivalency. However, Reclamation will undertake a review of its land classification and soils review procedures, and will implement appropriate changes in those procedures.

Future Operation of Formerly Excess Land by Excess Land Sellers

Under the prior rule, if a landholder sells his/her excess land, the landholder can immediately become the lessee of that land and continue to farm it with Reclamation irrigation water. This provision allows a landholder to avoid

the intent of the anti-speculation provision of the RRA.

Under the proposed rule, landholders would be prohibited from receiving Reclamation irrigation water on land which they previously held as excess. The only exceptions would be if the landholder became, or contracted to become, a direct or indirect landholder of the land prior to July 1, 1995, or such land becomes exempt from the acreage limitation provisions.

Under the final rule, landholders will be prohibited from receiving Reclamation irrigation water on land which they previously held as excess only for the term of the deed covenant associated with the sale of the excess land (10 years). In addition, other changes were made to the list of exceptions to this prohibition. The date for having contracted to become the landholder was changed from July 1, 1995, to December 18, 1996. While this date is prior to the effective date of this section, Reclamation has determined it is appropriate to set such a date, since the public was already notified that the date was going to be in advance of the effective date of the final rulemaking, July 1, 1995, in the proposed rule. Also a broad exception was provided for landholders who pay the full-cost rate for Reclamation irrigation water delivered to land that they formerly held as excess.

Involuntary Acquisition of Formerly Excess Land by Excess Land Sellers

Under the prior rules, no distinction was made between landowners who involuntarily acquired land that had previously been excess in his or her landholding or under recordable contract and those for which the land had not previously been excess or under recordable contract in their landholding. Any involuntarily acquired land that had been nonexcess before the acquisition and was designated as excess by the involuntarily acquiring party was eligible to receive Reclamation irrigation water for 5 years. In addition, such land could be redesignated as nonexcess by the involuntarily acquiring party or sold at full market value at any time.

Under the proposed rule, the landholder could not take advantage of the involuntary acquisition provision and receive water for 5 years, if the land involuntarily acquired had been excess or under recordable contract in his or her landholding. In order for such land to become eligible to receive Reclamation irrigation water, it had to be sold to an eligible buyer at a price approved by Reclamation. In addition, once designated as excess by the landholder who involuntarily acquired the land, the land could not be redesignated as nonexcess.

Under the final rule, two exceptions have been added to modify the prohibition on delivering Reclamation irrigation water to landholders who involuntarily acquire land that had been excess or under recordable contract in his or her landholding. Specifically, financial institutions have been defined and are excluded from this application and landholders that meet certain criteria listed in § 426.12 (deed covenant has expired, they pay the full-cost rate for the water delivered, etc.) may take advantage of the involuntary acquisition provision and receive water for 5 years. Financial institutions have also been fully exempted from the prohibition of selling the land at full market value.

In addition, the final rule provides that involuntarily acquired excess land may be redesignated as nonexcess, as long as the landowner follows the normal procedure for redesignating excess land and pays Reclamation any difference between the rate paid for the delivery of Reclamation irrigation water and what would have been paid if the land had initially been declared nonexcess when the land was involuntarily acquired.

Application of Compensation Rate and Administrative Fees in Cases of Irrigation of Ineligible Excess Land

Under the prior rule, actions that will be taken if Reclamation irrigation water is delivered to excess land are not addressed, other than such deliveries will be terminated. Current Reclamation policy is to also charge the compensation rate (full-cost rate) for such deliveries.

Under the proposed and final rules, Reclamation's existing policy on charging the compensation rate for any deliveries of water to ineligible excess land is incorporated. In addition, the proposed and final rules apply an administrative fee ($260) for such deliveries.

New Procedures for Administrative Appeals of RRA-Related Determinations

Under the prior rule, a two-step process is provided to appeal final RRA determinations made by Reclamation regional directors. The first level of appeal is to the Commissioner of Reclamation. The second level of appeal is to the Office of Hearings and Appeals (OHA).

Under the proposed rule, the Commissioner's review of the regional director's decision would have been eliminated. In its place was the right of the district or the landholder to request that the regional director reconsider his or her final determination. After the regional director reconsidered a determination, a direct appeal to OHA was provided. The proposed rule also required Reclamation to wait 10 days before implementing a regional director's decision to terminate delivery of water and allowed the Commissioner to stay decisions pending appeal to OHA.

Under the final rule, the two-step appeals process of the prior rule is retained, while the proposed rule step of requesting regional directors to reconsider their final determination is removed. The final rule allows the Commissioner to stay decisions pending and during appeal to OHA. The final rule also establishes time periods for affected parties to request stays and to submit supporting briefs to the Commissioner.

Language Changes

Throughout part 426 regulations, language has been redrafted for readability and clarity. The preamble of these regulations explains all intended substantive changes. Where no change is explained, the new language is intended only for clarity and no substantive change is intended.

Water Conservation

The prior rule required all districts to prepare and submit to Reclamation water conservation plans that contain definite objectives that are economically feasible, and a time schedule for meeting those objectives.

The proposed rule required districts to prepare and submit water conservation plans to Reclamation for approval, but provided some exceptions and opportunities for alternative compliance. The proposed rule required that plans set forth definite goals, identify actions for achieving the goals, and establish a reasonable time schedule for meeting the goals. The proposed rule also required that a plan contain the following four critical measures: (1) A water measurement and accounting system, (2) a water pricing structure designed to encourage increased efficiency of water use, (3) an information/education program, and (4) the designation of a district water conservation coordinator. The proposed rule also linked a district's progress in development and implementation of water conservation plans with the allocation of future discretionary Reclamation program benefits.

The final rule is the same as the prior rule regarding preparing and submitting a plan to Reclamation. There is no requirement for plan approval by

Reclamation in the final rules. Reclamation intends to encourage and assist districts in the development of quality water conservation plans, the demonstration of innovative conservation technologies, and the implementation of effective energy efficiency measures. Reclamation also recognizes the need for coordination with State and other Federal conservation programs.

Reclamation has the responsibility under Section 210(a) of the RRA to encourage water conservation. Districts have the responsibility under Section 210(b) to develop water conservation plans. Reclamation is presently implementing a Water Conservation Field Services Program (WCFSP) to actively encourage water conservation, assist districts with their responsibility to develop plans, and complement and support State and other conservation programs. The WCFSP will emphasize effective water conservation planning, the demonstration of innovative conservation technologies, and the implementation of effective efficiency measures.

Through the WCFSP, Reclamation Area Offices will work directly with districts to provide technical assistance in the preparation of effective water conservation plans, including how to incorporate appropriate environmental considerations into the planning process. Reclamation will review each water conservation plan submitted by a district, and provide advisory comments and recommendations on their identified goals and measures. Within available resources, Reclamation will also provide technical guidance in water conservation planning and implementation in the form of handbooks, workshops and training opportunities to ensure all districts an opportunity to develop and implement effective water conservation plans. Reclamation recognizes that a transition period will be required to receive updated plans from all affected districts and re-establish the 5-year cycle for all plans. Each fiscal year, Area Offices will develop a schedule for water conservation planning activities with districts, and annually report on the status of plan updates.

The main objective in water conservation planning is to accomplish water conservation on the ground. Reclamation will monitor the implementation of water conservation plans to determine whether water conservation planning has facilitated water conservation.

Background

The RRA (43 U.S.C. 390aa, *et seq.*) was signed into law on October 12, 1982. It was the culmination of an effort to modernize Federal reclamation law that began with the 95th Congress. The RRA made a number of changes to prior Federal reclamation law while retaining the basic principle of limiting the amount of land in ownership which may receive water deliveries from Reclamation projects. The RRA also made a major change to prior law by introducing the concept of full-cost pricing for some water deliveries.

Rules and regulations for implementing the RRA were published in the Federal Register (43 FR 54768, Dec. 6, 1983) and became effective on January 5, 1984. In 1987, the rules and regulations were amended, primarily to implement Section 203(b) of the RRA. The provision was intended to encourage Districts to amend contracts to conform to the discretionary provisions which were not addressed in the 1983 rulemaking. Revisions also were made to those provisions of the rules and regulations pertaining to submission of certification and reporting forms, trusts, nonresident aliens, water transfers, covenant restrictions, and religious and charitable organizations.

The 1987 rules and regulations and three alternatives were evaluated in an Environmental Assessment (EA) published by Reclamation in April 1987. The EA concluded that the impacts of the proposed rulemaking were primarily economic in nature and that no significant impacts to the environment would result from the rulemaking. A Finding of No Significant Impact concerning the 1987 rulemaking was therefore issued by Reclamation on April 8, 1987. Final rules and regulations were published in the Federal Register (52 FR 11954, Apr. 13, 1987) and became effective on May 13, 1987.

The Omnibus Budget Reconciliation Act of 1987, enacted on December 22, 1987, included amendments to the RRA. The amendments addressed revocable trust agreements, provisions for audits by Reclamation of compliance with reclamation law, application of full-cost water rates for lands under extendable recordable contracts, and interest on underpayments or nonpayments. Consequently, further proposed amendments to the rules and regulations were evaluated in a supplemental EA published by Reclamation in September 1988. The supplemental EA concluded that the impacts of the proposed rulemaking were primarily economic in nature and that no significant impacts to the environment would result from the rulemaking. A Finding of No Significant Impact concerning the 1988 rulemaking was therefore issued by Reclamation on September 23, 1988. Final rules and regulations were published in the Federal Register (53 FR 50535, Dec. 16, 1988) and became effective on January 17, 1989.

Final rules and regulations were published in the Federal Register (60 FR 10030, Feb. 23, 1995) and became effective on March 27, 1995, revising part 426 to impose administrative fees to recover costs incurred by Reclamation when irrigation water has been delivered to landholders who have not complied with the information collection requirements of the RRA, as amended.

Litigation Concerning the RRA Rules and Regulations

In 1988, the Natural Resources Defense Council (NRDC) and others filed a lawsuit challenging the validity of the 1987 and 1988 rules and regulations (*NRDC* v. *Underwood, No. Civ. S–88–375–LKK*). On July 26, 1991, the United States District Court for the Eastern District of California (Court) granted NRDC's partial motion for summary judgment. The Court ruled that Reclamation had not complied with the requirements of the National Environmental Policy Act (NEPA) in preparing the EA and the Findings of No Significant Impact in the promulgation of the 1987 rules and regulations.

Reclamation appealed the Court's decision to the Ninth Circuit Court of Appeals. In September 1993, while the appeal was still pending, the Department of the Interior (Interior), the Department of Justice, and NRDC entered into a Settlement Contract which required Reclamation ''to propose new rules and regulations implementing, on a westwide basis, the * * * [RRA] as part of a new rulemaking proceeding that comprehensively reexamines the implementation of the RRA.'' Reclamation published a proposed rulemaking on April 3, 1995.

The Settlement Contract also required Interior to prepare an environmental impact statement (EIS) considering the westwide impact of the proposed rules and regulations and alternatives. The Settlement Contract does not require the Department to change its existing rules. The required EIS has been published separately and notice of its availability was published in the ''notice'' section of the Federal Register (60 FR 4677, Feb. 7, 1996). A Record of Decision was

signed by the Assistant Secretary—Water and Science on December 10, 1996.

Advance Notice of Proposed Rulemaking

During the rulemaking process, the Department received a number of comments regarding the compliance of certain large trusts with the acreage limitation provisions of the RRA. Comments expressed a variety of viewpoints, including the assertion that some trusts with landholdings (owned and leased land) in excess of 960 acres total may circumvent the requirements of Reclamation law.

In response to these comments, the Department intends to publish an advance notice of proposed rulemaking in the Federal Register accompanying the final rules and regulations described here. This advance notice of proposed rulemaking addresses and builds upon the widely divergent views and comments received from the public regarding trusts holding more than 960 acres. Some comments alleged that water users employ certain devices, such as the creation of trusts, as a means to avoid the acreage limitation provisions of the RRA.

The treatment of various trust arrangements under the RRA can significantly affect how much acreage in a given farm arrangement is entitled to the delivery of subsidized water. Many family farms, trust departments of financial institutions, and others use trusts for estate planning and other purposes. The Congress included Section 214 in the RRA, which provides that lands held in trust are eligible under certain circumstances to receive subsidized water from Reclamation projects. Following the enactment of RRA and relying on Section 214, some large farms reorganized as trusts, and continue to receive nonfull-cost water.

The proposed rulemaking sought to address these concerns by changing the definition of what constitutes a lease for the purposes of the acreage limitation provisions. To prevent circumvention of the RRA, Reclamation has treated farm operators as lessees subject to the acreage limitation provisions if the operator assumes the economic risk of the farming enterprise and has use or possession of the land. The proposed rulemaking focused on possession of the land. Under that proposed change, if someone other than the landowner has possession of the land, then Reclamation would determine that a lease subject to the acreage limitation provisions existed regardless of whether that person or entity also assumed the economic risk. One of the effects of that proposal may have been to treat certain operators of land held in trust as lessees.

Based upon comments on the proposed rulemaking, Reclamation has determined that the proposed provision altering the definition of a lease is an inadequate means of addressing the concerns about compliance with the acreage limitation provisions of the RRA and could have produced unintended consequences. Many comments from the public raised concerns about the effects of such a change on custom service providers, specialty services, and lenders among others. Many comments noted that modern farm operators often provide the necessary equipment and services to farming operations that cannot be economically provided to only 960 acres if the farmer is to cover expenses and make a reasonable return on investment. Other comments noted that the proposed change would not work and could be easily avoided. As a result of its review of the proposed rulemaking and the widely divergent comments received from the public, the Department has determined that seeking further public comment to an advance notice of proposed rulemaking is appropriate.

Reclamation's comprehensive February 1991 review of RRA implementation contains the most recently published data on administration and enforcement of RRA through 1990. According to this review, out of a total of 550 trust arrangements, only 35 trusts (primarily in California, Arizona, and Washington) held more than 960 acres. Thus, the vast majority of the 550 trusts were found to be well within the RRA's acreage limitations.

Through the advance notice of proposed rulemaking, the Department will invite comments and suggestions on: (1) Whether to limit nonfull-cost water deliveries to large trust arrangements that exceed 960 acres; (2) the criteria used to determine whether landholdings (owned and leased land) in excess of 960 acres total, operated under a trust agreement, should be eligible to receive non-full cost water deliveries; (3) whether Reclamation project non-full cost water deliveries to such large scale trusts are consistent with the principles of Federal reclamation law; (4) the appropriate criteria and standards to be applied to such trusts, implementation of the criteria and standards; and (5) the extent of the Department's statutory authority to address this issue. For example, what is the extent of the Department's legal authority to regulate: (a) Future trusts, (b) trusts established from 1982 to the present, and (c) trusts established prior to 1982. Suggested approaches should ensure fairness for those farming operations which are subject to acreage limitation provisions, while eliminating the use of arrangements which are inconsistent with the acreage limitation provisions of Federal reclamation law.

Public Involvement

A notice of intent regarding preparation of the EIS and a notice of intent regarding the proposed rulemaking were published in the Federal Register (58 FR 64277 and 58 FR 64336, Dec. 6, 1993). A press release was issued on December 29, 1993, and approximately 3,500 information packets were distributed to environmental groups, entities that have contracts with Reclamation for project water supplies, the media, and other interested parties. Public scoping meetings were held in January 1994 to receive public input regarding the issues and alternatives to be considered in the EIS and rulemaking. Scoping sessions were held in Billings, MT; Fresno, CA; Salt Lake City, UT; Phoenix, AZ; Boise, ID; Spokane, WA; Portland, OR; and Denver, CO. In addition to the oral comments received at the scoping sessions, approximately 150 letters were received.

A notice of availability regarding the draft EIS was published in the Federal Register (60 FR 16662, Mar. 27, 1995). Proposed rules and regulations were published in the Federal Register (60 FR 16940, Apr. 3, 1995). A press release was issued on April 3, 1995, and copies of the draft EIS and proposed rules were distributed to environmental groups, entities that have contracts with Reclamation for project water supplies, State and Federal offices, libraries, and other interested parties.

Notices of public hearings on the draft EIS and proposed rules were published in the Federal Register (60 FR 20114 and 60 FR 20068, Apr. 24, 1995). Public hearings on the draft EIS and proposed rules were held in May 1995. Hearings were held in Billings, MT; Yakima, WA; Denver, CO; Boise, ID; Phoenix, AZ; Sacramento, CA; Salt Lake City, UT; and Fresno, CA. One week prior to the public hearings, informational public forums were held in Billings, MT; Yakima, WA; Bend, OR; Denver, CO; Boise, ID; Phoenix, AZ; Sacramento, CA; Salt Lake City, UT; Fresno, CA; Albuquerque, NM; and Palm Desert, CA.

The public comment period ran from April 3 through June 26, 1995. In addition to oral comments received at the hearings, 382 letters and 80 recorded phone calls were received during the comment period.

Responses to public comments on the proposed rules are provided below.

Comments on the draft EIS are responded to in the final EIS.

Public Comments and Responses on General Issues

The following section presents public comments on the proposed rules that are general in nature. This section includes comments on authority, process, relationship with other documents, relationship with other laws and mandates, water rights and contracts, westwide action, and other general beliefs and comments that were not specifically directed toward parts 426 or 427.

Authority/Settlement Contract

Comment: Do you have the authority to change these laws without going through Congress?

Response: Only Congress has the authority to change the RRA. However, Reclamation has the authority to promulgate and amend rules and regulations that implement and interpret the RRA. This rulemaking amends the prior rules and regulations, not the RRA.

Comment: We do not feel Reclamation had legal authority to sign the settlement agreement as drafted; therefore, the proposed rules and draft EIS which are the product of that contract are invalid. We request that Reclamation, in the final EIS, provide a detailed description of the sections of the RRA that provide the authority to carry out the various provisions found within the settlement contract.

Response: The Department of the Interior and the Department of Justice certainly have legal authority to sign the Settlement Contract. Moreover, Reclamation's authority to promulgate new regulations and prepare an EIS comes from the Secretary's general authority, NEPA, the RRA, and Federal reclamation law in general. In preparing an EIS, an agency is required to consider a range of alternatives and is allowed to include alternatives that fall outside current authorities. However, all provisions included in the final rules and regulations must fall within the agency's legal authorities. All provisions in these final rules fall within Reclamation's authorities, which are stated at the beginning of the regulations.

Comment: The Settlement Contract between NRDC, Interior, and the Department of Justice calls for Reclamation to consider ''alternatives designed to achieve the greatest degree of water conservation and environmental restoration possible under the RRA and other applicable laws and return a maximum amount of revenues to the United States * * *.'' While the proposed rules represent significant progress, we feel that Reclamation has not yet adequately addressed all of the provisions of the Settlement Contract.

Response: The Settlement Contract requires Reclamation to consider specific alternatives in the EIS. Reclamation fulfilled its responsibilities under the Settlement Contract by issuing a final EIS that considers all alternatives identified in the Settlement Contract. Reclamation also reexamined the alternatives discussed in the draft EIS and expanded its consideration of environmental impacts of the alternatives.

Comment: It's my understanding it is not necessary that Reclamation impose new rules and regulations, but this matter be merely considered. I feel that in view of the fact that the prior rules and regulations have worked in a generally satisfactory manner, they should not be modified.

Response: The Settlement Contract does not require Interior to adopt final rules that are different from the rules in effect on the date of the agreement (the prior rules). However, Interior has chosen to modify the prior regulations in some areas to clarify some prior provisions, include changes which increase Reclamation's effectiveness in administering the RRA, or incorporate existing Reclamation policies.

Process

Comment: As we go through this entire process of public input, what priority will be placed on comments from those who are truly impacted by these proposed regulations? What will happen if the alternatives specified in the Settlement Contract are not met?

Response: Reclamation gives equal priority to all comments when considering proposed rules and writing final rules. The Settlement Contract requires Reclamation to prepare an EIS considering the impacts of the proposed regulations and specific alternatives included in the Settlement Contract. Reclamation fulfilled its responsibilities under the Settlement Contract by issuing a final EIS that considers all alternatives identified in the Settlement Contract.

Comment: We ask that Reclamation withdraw and reconsider the proposed rules.

Response: If appropriate, Reclamation proposes new rules or changes to rules, reviews public comments on the proposed rules and changes, and issues final rules based on the comments received. Reclamation has reviewed and considered public comments as part of the rulemaking process and has determined that the final rules will improve the administration of the RRA.

Comment: It is necessary for Reclamation to confirm that no substantive changes are intended except as specifically noted; otherwise farmers will be left guessing whether new words mean something different than old words.

Response: Substantive changes between the prior and final rules are summarized in this preamble. In part 426 the regulations have been reworded for clarity. In those instances, Reclamation has indicated in the preamble where substantive policy change is intended.

Comment: The timing of these proposed rules is the worst it could be for farmers. It requires them to take time from their job of planting to address these issues before they become fact.

Response: The proposed rules were originally scheduled for publication in December 1994, which would have avoided this problem. Unfortunately, publication was delayed until April 3, 1995. As described later in this preamble, most of the final Acreage Limitation Rules and Regulations will not be effective until January 1, 1998 (the RRA forms submittal threshold is effective January 1, 1997). This action is taken to provide time for landholders and districts to review, understand, and implement any revisions.

Comment: The process of reviewing, attending meetings, and commenting on these proposed rules has been tremendously time-consuming and expensive. The review of just one of these documents can be intimidating to an irrigation district manager who has many other tasks to perform on a daily basis to keep the district running smoothly.

Response: During many activities, Reclamation receives comments stating that Reclamation is conducting too many public reviews and meetings, and receives comments stating that Reclamation is not conducting enough public reviews and meetings. Reclamation realizes there are many resource management issues facing the public today and that many of these issues require substantive input. However, Reclamation would rather provide sufficient opportunity for public input on each issue, than take steps to minimize the opportunity for providing input.

Comment: We would appreciate a written response to our comments.

Response: All comments received during the public comment period are included in the administrative record. Each comment was considered when

the final rules and regulations were developed. In the preamble to the final rules, Reclamation provides a written response to comments received. Reclamation does not generally provide individual response letters to comments received as part of the rulemaking process.

Comment: I just called on your toll-free line for commenting on the proposed rules—that's the shortest 10 minutes I ever saw in my life—about 30 seconds.

Response: There was a short time when the computer software connected to our toll-free number malfunctioned and didn't allow a full 10 minutes for making comments. After fixing the problem, Reclamation attempted to contact everyone that had left their names and phone numbers before being cut off. The toll-free comment line received 88 calls, some of which were requests for information. Only one person commented on the idea of a toll-free comment line to take public comments, stating that it was a very good idea and should be used throughout Interior more often.

Relationship With Other Documents

Comment: What is the necessity of having three separate documents [proposed regulations, water conservation guidelines and criteria (Guidelines and Criteria), and EIS] and what is the connection?

Response: The proposed regulations contained all the proposed Federal regulations for implementing and interpreting the Reclamation Reform Act of 1982. The draft and final EIS analyzed the potential environmental (including economic) impacts of implementing the proposed regulations, and alternatives. The draft Guidelines and Criteria contained Reclamation's draft recommendations for a sound water management and conservation planning process. Under the proposed rule alternative of the draft EIS, the Guidelines and Criteria were characterized as a stand-alone document which would be used as the standard upon which to approve plans required by the proposed rules. Under alternatives B and C, the contents of the Guidelines and Criteria were incorporated into the actual rules.

The final rules contain the same regulatory requirements for preparing water conservation plans as the prior rules. The requirement for plan approval is not included in the final rules. Reclamation will issue advisory guidance relating to its water conservation program. Also, a handbook entitled ''Achieving Efficient Water Management: A Guidebook for Preparing Agricultural Water Conservation Plans'' will be available to aid water conservation efforts. Neither of these documents has been incorporated into the final rules, and they do not constitute regulatory requirements.

Comment: The timing of the publication of the proposed rules made it impossible for Reclamation staff to benefit prior to the rulemaking from the most recent comments on the Guidelines and Criteria.

Response: Although the proposed rules and draft Guidelines and Criteria had some common elements, the two documents served different purposes. The draft Guidelines and Criteria were being developed before the rulemaking began. The draft Guidelines and Criteria contained Reclamation's recommendations for a sound water management and conservation planning process and could have been used in conjunction with either the prior rules or the proposed rules. Therefore, it was appropriate to seek comments separately on the Guidelines and Criteria, and prior to publication of the proposed rules.

Comment: These proposed rules, by incorporating the Guidelines and Criteria, are in violation of the Administrative Procedure Act.

Response: There was a link between the proposed rules and Guidelines and Criteria, because the rules proposed to use the draft Guidelines and Criteria as the standard upon which Reclamation would base its approval of water conservation plans. The final rules contain no requirement for plan approval, thus, the final rules do not incorporate Reclamation's advisory guidance on water conservation in a regulatory fashion.

Comment: The draft EIS states that ''ultimately, the rules and regulations, when published as final rules, will replace the Guidelines and Criteria.''

Response: This statement was true for alternatives B and C, but not the proposed rule alternative. Alternatives B and C incorporated elements of the draft Guidelines and Criteria as integral parts of the proposed rules. Under these alternatives, the final rules would eventually replace the Guidelines and Criteria. The proposed rule alternative characterized the proposed rules and draft Guidelines and Criteria as separate, related documents. Under the proposed rule alternative, the Guidelines and Criteria would have provided guidance in addition to the rules. The final rules published today do not replace the advisory guidance.

Relationship With Other Laws and Mandates

Comment: The proposed rules document declares:

> * * *any future actions taken pursuant to final rules and regulations by the Federal Government or by contracting entities (e.g., irrigation districts, drainage districts, municipal and industrial water districts, etc.) shall be subject to the requirements of all applicable Federal environmental laws including, but not limited to, the NEPA, the Endangered Species Act, the Fish and Wildlife Coordination Act, the Clean Water Act, and the National Historic Preservation Act, and laws relating to Indian treaty and trust responsibilities.
>
> Just this list of compliance requirements alone will paralyze districts, defeating Reclamation's purpose.

Response: The above statement was included in the preamble to the proposed rules, but does not add to a district's existing obligations. The statement was intended to convey the message that nothing in the proposed rules would nullify any applicable requirements of these laws.

Comment: Both the publication of the rules and the EIS constitute major Federal regulatory actions which together will impose massive additional unfunded Federal mandates upon local governments and private businesses and individuals. Such action violates the spirit and intent of Public Law 104–4, which was signed into law on March 22, 1995.

Response: Reclamation has reviewed these final rules and determined that the rulemaking meets all of the requirements set forth in the Unfunded Mandates Reform Act of 1995. The final rules do not impose additional unfunded Federal mandates and, in fact, reduce some RRA forms requirements contained in the prior rules and regulations.

Water Rights and Contracts

Comment: While farmers have contracts for delivery of water from Reclamation irrigation projects, the water users themselves hold the rights to the use of the water. It is these private property rights to the use of water that could be impaired or essentially taken if the water users in the district do not accept or satisfy new contract requirements and regulation changes that would be mandated by the proposed rules and regulations.

Response: The final rules contain no provisions that would directly affect any privately held property rights to the use of water or that would affect contract language with regard to privately held property rights to the use of water.

Comment: We believe that the proposed rules and regulations would

attempt to exert undue Federal influence through monetary incentives or penalties and through contractual requirements for water contract renewals in order to reallocate water from traditional uses such as irrigation to nontraditional purposes such as instream flow.

Response: Neither the proposed nor final rules contain any monetary incentives, penalties, or requirements for water contract renewals that would result in the reallocation of water from traditional uses such as irrigation to purposes such as instream flow. The final regulations do not adopt any provisions regarding the use or reallocation of conserved water.

Comment: The new rules allow for unlimited charges to be imposed on farmers with no studies being done to determine ability to pay.

Response: The final rules do not allow unlimited charges. The final rules do not affect application of the statutory ''ability to pay'' concept to project repayment costs.

Comment: The proposed rules mandate compliance with the water conservation plan requirements imposed by the proposed rules and Guidelines and Criteria. Failure to comply, according to the proposed rules, will result in the cancellation or refusal to renew storage contracts, thereby depriving the irrigation water users of established rights. Such action will constitute a ''taking'' of a constitutionally protected property right in violation of the United States Constitution.

Response: The proposed rules would have provided that Reclamation consider a district's progress in development and implementation of water conservation plans when prioritizing the allocation of ''future discretionary Reclamation program benefits.'' In the proposed rules, the description of this type of benefit included future, temporary, or short-term contracts and Warren Act contracts that Reclamation has the discretion to provide. In the final rules, this provision has been deleted. The final rules do not adopt any provisions calling for refusal to renew storage contracts.

Westwide Nature

Comment: The rules should not be implemented in a ''one-size-fits-all'' manner. The regulations and their enforcement must be flexible and adaptable to meet various situations in a practical way. We strongly urge that rules and regulations be developed and applied locally, rather than on a westwide basis.

Response: The rules and regulations implement the requirements of the RRA. The law contains specific requirements that are to be applied in a consistent fashion on a westwide basis. Where the law does allow for flexibility, this flexibility has been integrated into the rules and regulations.

Comment: I am concerned that the settlement agreement reached with NRDC over litigation on water management practices in California is now dictating Reclamation policy westwide, into areas which have very different water issues and concerns. All of your water contractors outside of California are now having to comply with settlement provisions on which they had no opportunity to comment or to participate in the development of the conditions.

Response: The settlement agreement did not require Reclamation to consider issues of concern only in California. Neither the proposed nor the final rules were written to address specific concerns in California or any other geographic area, but were written to implement the requirements of the RRA imposed by the Congress on all areas westwide. Water contractors and the public were provided ample opportunity during the scoping process to provide written and oral comments on what should be considered in the proposed rules and EIS.

General

Comment: Reclamation has the responsibility to protect and restore the environment and the authority to allocate water for fish and wildlife purposes under a variety of statutes and treaties, including the Endangered Species Act, the Northwest Electric Power Planning Conservation Act, the Grand Canyon Protection Act, and treaties with Native American tribes. Reclamation needs to develop new strategies and mechanisms to ensure that efficiency improvements do benefit the environment rather than simply increasing consumptive uses.

Response: Reclamation takes seriously its responsibility to protect and restore the environment and has some responsibility to allocate water for fish and wildlife purposes under certain statutes and treaties. Reclamation will also encourage districts to consider environmental uses of conserved water.

Comment: The rule should have an increased emphasis on important nonconsumptive uses of water. While it is necessary to maintain flexibility in the rule it is also critical to provide mechanisms that strongly encourage water users to provide adequate water flows to support fish and wildlife.

Response: A rule can provide mechanisms to encourage a desired response by the affected public, but these mechanisms must fall within the intent of the authorities upon which the rules are based. The RRA and other referenced authorities provide limited opportunity to develop regulatory mechanisms that encourage water users to provide water flows to support fish and wildlife. As resources permit, Reclamation will provide technical and financial assistance to districts in the development and implementation of water conservation plans. As part of this assistance, Reclamation will encourage districts to look at all water needs including non-consumptive uses and flows to support fish and wildlife.

Comment: The rule should not treat the issues of water spreading and incentive pricing as ''beyond the scope.''

Response: These rules and regulations implement the acreage limitation and water conservation provisions contained in the RRA and other related laws. ''Water spreading,'' which is generally defined as the unauthorized use of project water, may involve acreage limitation or reporting issues. Those issues are addressed through the acreage limitation provisions of these rules. However, the majority of what is considered to be ''water spreading'' is not an acreage limitation or water conservation issue and is, therefore, not addressed by this rulemaking. Incentive pricing is a water pricing issue, a contracting issue, and a water conservation issue. Incentive pricing was included as an alternative in the EIS and was considered in this rulemaking.

Comment: We believe the old rules probably are as workable as is possible in trying to put this together on an overall basis. The public's best interest would be served if there would be no changes in the prior rules and regulations.

Response: Reclamation received many comments stating that the prior rules were acceptable, widely understood, and should be retained. In the proposed rule, Reclamation attempted to improve the clarity of many regulatory provisions, include current Reclamation policies that were not part of the prior rule, and respond to public criticism over past interpretation of some provisions of the law. In some cases, public comments indicated that the proposed changes could create additional problems or could cause problems for entities that should not be affected by the changes. Reclamation has reviewed each proposed change in light of public comments and has

addressed those comments in the content of each section. In many cases, Reclamation has made changes for clarity while making no substantive change in the provision, or merely codifying existing policy.

Part 426 (Acreage Limitation)—Summary of Changes; Public Comments and Responses

This section of the preamble describes changes from the prior acreage limitation rules to the final acreage limitation rules, provides examples of how the new provisions would be applied, and provides responses to public comments received on the proposed rules.

Redesignation Table

A number of changes have been made to the location and titles of the various sections of the Acreage Limitation Rules and Regulations. The following provides an overview of these changes. More detailed information is provided in the section-by-section analysis.

Section No.	Old title	Revision(s) made to old title	New title
426.1	Objectives	Renamed	Purpose.
426.2	Applicability	Removed	Definitions.
426.3	Authority	Removed	Conformance to the discretionary provisions.
426.4	Definitions	Moved to § 426.2	Attribution of land.
426.5	Contracts	Moved to § 426.3 and renamed	Ownership entitlement.
426.6	Ownership entitlement	Moved to § 426.5	Leasing and full-cost pricing.
426.7	Leasing and full-cost pricing	Moved to § 426.6	Trusts.
426.8	Operation and maintenance (O&M) charges.	Moved to § 426.23 and renamed	Nonresident aliens and foreign entities.
426.9	Class 1 equivalency	Moved to § 426.11	Religious or charitable organizations.
426.10	Information requirements	Moved to § 426.18 and renamed	Public entities.
426.11	Excess land	Moved to § 426.12	Class 1 equivalency.
426.12	Excess land appraisals	Moved to § 426.13	Excess land.
426.13	Exemptions	Moved to § 426.16 and renamed	Excess land appraisals.
426.14	Residency	Removed	Involuntary acquisition of land.
426.15	Religious and charitable organizations	Moved to § 426.9 and renamed	Commingling.
426.16	Involuntary acquisition of land	Moved to § 426.14	Exemptions and exclusions.
426.17	Land held by governmental agencies	Moved to § 426.10 and renamed	Small reclamation projects.
426.18	Commingling	Moved to § 426.15	Landholder information requirements.
426.19	Water conservation	Moved to 43 CFR Part 427	District responsibilities.
426.20	Public participation	Moved to § 426.22	Assessment of administrative costs.
426.21	Small reclamation projects	Moved to § 426.17	Interest on underpayments.
426.22	Decisions and appeals	Moved to § 426.24 and renamed	Public participation.
426.23	Interest on underpayments	Moved to § 426.21	Recovery of operation and maintenance (O&M) costs.
426.24	Assessment of administrative costs	Moved to § 426.20	Reclamation decisions and appeals.
426.25	Severability	Moved to § 426.26	Reclamation audits.
426.26	Not applicable	Not applicable	Severability.

Part 426 General Comments

Comment: Several commenters noted that the revisions to the acreage limitation provisions are not necessary. If revisions are made, they should be kept to a minimum; in certain areas such as leases, trusts, involuntary acquisitions, etc., no changes should be made.

Response: Reclamation believes that changes can be made to the prior rules that will ease certain burdens placed on districts and landholders and will answer questions that have arisen with regard to application of the acreage limitation provisions. The prior rule has been rewritten to state requirements more clearly and in plain English. In addition, certain possible abuses to the system have been addressed. Reclamation believes the comments received have allowed these regulations to be revised to improve the regulatory effectiveness of the program without creating unnecessary burdens.

Comment: Several commenters asked that Reclamation provide greater flexibility in the administration of the RRA. For example, one commenter suggested that area offices be allowed to modify the rules to meet local needs. Other commenters suggested that Reclamation should exercise greater flexibility to reward consistent payment of bills or a good environmental record.

Response: The RRA requires Reclamation to establish westwide standards for such things as ownership and nonfull-cost entitlements, and RRA forms threshold, (e.g., 43 U.S.C. 390cc through 390ff). Therefore, Reclamation must administer the acreage limitation provisions consistently westwide. Even if Reclamation could establish regulations on a project-by-project basis, the westwide nature of the statute and the resultant costs on both Reclamation and districts to administer such a program do not allow for such an action.

Comment: Several commenters wanted assurance that any changes to the regulations would not be applied retroactively. In addition, a number of commenters wanted any changes to the rules either phased-in or accompanied with a grace period.

Response: Reclamation has taken these comments into account by providing for an effective date of January 1, 1998, except for the RRA forms submittal threshold, which will be effective January 1, 1997. The January 1, 1998, effective date was established to provide all interested parties with an opportunity to review the final regulations and initiate any actions that would be advantageous for them.

Comment: The proposed regulations include numerous examples in the preamble rather than in the body of the rules. If it is determined that, as a matter of style, the examples should be kept physically separated from the text of the

rules, there should be a statement to the effect that the examples are incorporated by reference into the text of the final regulations.

Response: The examples have been included in the preamble of this final rulemaking. However, the examples were purposely removed from the text of the rule because Reclamation reconsidered its previous position and decided that regulations should not be promulgated through examples. The examples are included in the preamble strictly for illustrative purposes.

Comment: A forced sale results in a taking of property without appropriate compensation.

Response: Nothing in these regulations results in forcing landowners to sell their land or water rights. These rules address who may receive irrigation water and what water rate must be paid. In the case of recordable contracts, landowners voluntarily agree to sell excess land in order to receive a benefit from Reclamation, namely, the delivery of irrigation water to land that is otherwise ineligible to receive such water.

Comment: Several commenters noted that training will be needed on the new regulations.

Response: Reclamation plans to hold westwide training for district and Reclamation staff.

Section 426.1. Purpose

The final rule changes the title of this section from *Objectives* to *Purpose.* The regulatory text has been rewritten to include a straightforward statement as to the purpose of these regulations.

No comments were received concerning this section.

Section 426.2. Definitions

The prior section on applicability is removed. Because the rule's scope of effect is not the same for the various provisions of the regulations, Reclamation has determined that the best approach is to have each section speak for itself as to its applicability. Section 426.2 defines terms used in the regulation and replaces § 426.4 of the prior regulations.

Numerous changes are made to the definition section, most with the intent of clarifying existing policy. The more significant of the changes, that were also included in the proposed rules, are discussed as follows in alphabetical order:

Acreage limitation entitlement, acreage limitation provisions, and *acreage limitation status* are added to the regulations to add precision and to replace the compound term *ownership limitation and pricing restrictions.*

Arable land is deleted because the term's only use is within the definition of *irrigable land.* The term *arable land* was included in the prior rules because the definition of *irrigable land* is based on one more useful for formal land classification purposes. Reclamation has determined that a simpler definition of the term *irrigable land* is appropriate for this regulation, and, therefore, a definition of the term *arable land* is unnecessary.

Commissioner is added to define a term that is used in these regulations.

For conciseness only, the two sentences in the definition of the term *contract* have been merged. In addition, the term *agreement* was added to broaden the definition to ensure all arrangements between Reclamation and water users that may be subject to application of the acreage limitation provisions are captured.

Contract rate is changed to reflect awareness of the fact that many contracts do not include per acre or per acre-foot rates. For purposes of this part, however, *contract rate* means such a rate on a per acre or per-acre-foot basis.

Direct and *indirect* are defined in this final regulation because they are used in the RRA and are frequently used in the text of the regulation. The terms apply in situations wherein land is held *directly* by a landowner or lessee, or *indirectly* by a party that has a beneficial interest in an entity that is a landowner or lessee (such as a stockholder, partner, or trust beneficiary).

Discretionary provisions of Title II is replaced with *discretionary provisions.* Also, Section 203(b) is excepted from this definition, since it applies even to prior law districts and landholders. Finally, United States Code (U.S.C.) citations are substituted, as they are more useful in locating the relevant statutes.

District is changed to replace the phrase *eligible to contract* with *can potentially enter into a contract,* in order to avoid the use of the term *eligible,* which has its own specific meaning under part 426.

Eligible is included to reflect its common meaning among those familiar with acreage limitation provisions: the right to receive irrigation water without consideration of the price paid for that water. This definition can be compared with that of *ineligible.*

Exempt land is replaced with the term *exempt* primarily because that term can be applied to districts and certain types of landholders (e.g., trusts and public entities), as well as to specific land parcels.

Extended recordable contract is added to define a term that is used in these regulations.

In the definition of the term *full cost, Secretary* is changed to *Reclamation.*

Full-cost rate and *full-cost charge* are defined to differentiate between the two terms.

The reference to the Internal Revenue Code is deleted from the definition of *individual* because that concept is covered in the definition of *dependent.*

Ineligible is added to reflect that term's common meaning among those familiar with acreage limitation provisions: the lack of eligibility to receive irrigation water at any price. This definition can be compared with that of *eligible.*

Intermediate entity is added to define a term used in these regulations.

Involuntary acquisition is added to define a term used in these regulations.

Irrevocable elector is added to define a term that is used in these regulations.

Irrigable land is changed to be more concise and understandable. The phrases from the prior regulation excluding permanent buildings, etc., are transferred to the definition of *nonexempt land.*

Landholder is modified to delete the references to the terms *qualified recipient, limited recipient,* and *prior law recipient,* because not all landholders fall into these categories (i.e., trusts and public entities). The terms *directly* and *indirectly* have been added to the definition to clarify which landowners and lessees are considered to be landholders.

Landholding has been greatly simplified. The final definition is clearer, and takes advantage of the new term *nonexempt land.* It should be noted that involuntarily acquired land is included within this definition of *landholding.*

Nondiscretionary provisions is modified to eliminate the reference to Title II, to include Section 203(b), and to include the United States Code citation. The second sentence of the prior definition has been eliminated because that concept is covered elsewhere in the regulations.

Nonexempt land is newly defined in these final regulations to replace the compound term *irrigable and irrigation land. Nonexempt land* is defined more precisely than *irrigable and irrigation land,* and is used as a concise term to describe, generally, all land subject to the acreage limitation provisions of Federal reclamation law.

Nonfull-cost entitlement is modified to enhance clarity by including the defined term *nonfull-cost rate.*

Nonresident alien entitlement is eliminated because, under the final rules, nonresident aliens will be treated as prior law recipients, unless certain criteria have been met. See § 426.8.

Operation and maintenance costs or O&M costs is newly defined in order to clarify the types of activities that are included in the calculation of operation and maintenance costs.

Ownership entitlement is added to define a term that is used in these regulations.

Prior law is modified primarily to include United States Code citations.

Public entity is added to define a term that is used in these regulations.

Qualified recipient is modified to include married couples in which only one spouse is a U.S. citizen or resident alien.

Reclamation is added to define a term that is used in these regulations.

Reclamation fund is modified to eliminate unnecessary language.

RRA is added. This term is used throughout the regulations as it is concise and well understood by most readers.

Standard certification or reporting forms is added to define a term that is used in these regulations.

Title II is eliminated in favor of a definition of the term *RRA* which is used throughout these regulations.

The following changes to definitions included in the final rules were not reflected in the proposed rules.

Compensation rate was defined in proposed regulations to describe the full-cost charges applied to certain types of illegal irrigation water deliveries that are not discovered until after they have taken place. This was retained. In addition, it has been further revised for these final regulations to ensure it is understood that application of the full-cost rate is for the legal delivery of irrigation water to land that exceeds the nonfull-cost entitlement.

As in the proposed rules, *indirect* is added. See the above discussion of the term *direct.* In the final rules it has been specified that lenders holding only a security interest in the land are specifically excluded from the definition of *indirect.*

Again, as in the proposed rules, *irrevocable election* is changed to delete both the reference to *Title II* and the second sentence which presently contains additional explanation that is redundant with that contained in the text of the prior rule. The final version has been revised to make it clear that this term is referring to a process, not to any specific document.

Irrigation land was modified in the proposed rule primarily to exclude land exempt from acreage limitation laws. Also, the phrase *in a given water year* is added to clarify that land which has received irrigation water retains *irrigation land* status for the entire water year, even if irrigation is not taking place at any particular time. The final rule includes an additional modification to ensure that any land receiving water for irrigation purposes from a Reclamation project facility will be counted against the landholder's acreage limitation entitlements. While this reflects current policy, Reclamation would like to ensure there is no confusion on this issue based on the regulatory definitions.

Irrigation water was modified from the proposed version so that it would more closely reflect the statutory definition.

Lease has been changed from the definition in the proposed rule and in the prior rule. The final definition revises the prior rule for clarity and to conform it with long standing Reclamation policy. It includes the same key elements Reclamation examined under the prior rule when determining if a farming arrangement is a *lease,* rather than focussing solely on possession of the land as had been proposed. After considering comments, Reclamation determined that this would not be workable.

Specifically, when Reclamation examines a farming arrangement to determine if it is a lease Reclamation will consider who assumes the economic risk in the farming operation; who has the use or possession of the land; who is responsible for paying operating expenses; and who is entitled to receive the profits from the farming operation. Since most individuals or entities involved in a farming operation have use or possession of the land, the key element will often be if the operator in question also has assumed a portion of the economic risk. By contrast, if an individual has a typical forward contract, the economic risk is often shared by the landholder and the contracting company, but the contracting company has no use or possession of the land. This definition differs from the prior rule in that the prior rule contained the term ''use and possession''. Reclamation has become aware that this might lead to confusion if anyone felt that two separate elements must both be present. Reclamation has always construed the language such that either use or possession, together with economic risk, constituted a lease. Therefore, it has adopted the language to clarify this intent. This definition is not intended to have a different substantive effect than the prior rules and how the prior rules have been administered by Reclamation.

In administering the nonfull-cost entitlement provision, Reclamation must determine if the farming arrangement constitutes a lease for acreage limitation purposes. In general, Reclamation must make this determination on a case-by-case basis. However, Reclamation has determined that most custom service arrangements in which only one narrow farm service is provided, or arrangements in which lenders hold only a security interest in the farming operation, usually do not constitute leases. On the other hand, Reclamation has determined that, consistent with current Reclamation interpretation, sharecropping arrangements are always leases for acreage limitation purposes.

Some comments alleged that water users employ certain devices, such as the creation of trusts, as a means to avoid the acreage limitation provisions of the RRA. The proposed rulemaking sought to address these concerns by changing the definition of what constitutes a lease for the purposes of the acreage limitation provisions. To prevent circumvention of the RRA, Reclamation has treated farm operators as lessees subject to the acreage limitation provisions if the operator assumes the economic risk of the farming enterprise and has use or possession of the land. The proposed rulemaking focused on possession of the land. Under that proposed change, if someone other than the landowner has possession of the land, then Reclamation would determine that a lease subject to the acreage limitation provisions existed regardless of whether that person or entity also assumed the economic risk. One of the effects of that proposal may have been to treat certain operators of land held in trust as lessees.

Based upon comments on the proposed rulemaking, Reclamation has determined that the proposed provision altering the definition of a lease is an inadequate means of addressing the concerns about compliance with the acreage limitation provisions of the RRA and could have produced unintended consequences. Many comments from the public raised concerns about the effects of such a change on custom service providers, specialty services, and lenders among others. Many comments noted that modern farm operators often provide the necessary equipment and services to farming operations that cannot be economically provided to only 960 acres if the farmer is to cover expenses and make a reasonable return on investment. Other comments noted that the proposed change would not

work and could be easily avoided. As a result of its review of the proposed rulemaking and the widely divergent comments received from the public, Reclamation has determined that seeking further public comment to an advance notice of proposed rulemaking is appropriate.

As in the proposed rule, *legal entity* is broadened to include certain types of landholding arrangements whose status for acreage limitation purposes had been unclear under the prior regulation. The final rule clarifies the proposed definition, stating that trusts are included as *legal entities* only for purposes of RRA forms submission.

The term *nonproject water* was added in the proposed rules in the commingling section to define a term that is used in these regulations. In the final rules this term was moved to the definitions section because it is found in multiple sections.

Part owner was added in the proposed rule to define a term that is used in these regulations. The final rule retains the proposed rules' definition, but it has been revised to clarify that lenders, who only have a security interest and are not otherwise considered to be the landholder of the land, are not considered to be part owners for acreage limitation purposes.

The definition of *prior law recipient* has been modified from the proposed version to eliminate the statement that nonresident aliens and entities not established under State or Federal law are always *prior law recipients.* The entitlements of nonresident aliens and foreign entities are now discussed in a separate section (§ 426.8).

Water year is a new addition to the final rules that defines a term that is used in these regulations.

Comments Concerning § 426.2—Definitions

Comment: There is no authority to expand the definition of ''district'' beyond that provided in RRA Section 202(2).

Response: The definition in the final regulations mirrors the statutory definition, except that ''Secretary'' has been replaced with ''United States.'' In addition, some explanatory language was included to explain exactly what types of contracts are included. The language in the final regulations is essentially the same as that found in the prior regulations. Reclamation does not intend to expand the definition beyond that provided in the statute.

Comment: The definition of ''full cost'' or ''full-cost rate'' should clarify that the full-cost charge is the difference between the applicable nonfull-cost rate, which may include a capital component, and the full-cost rate, which includes the applicable interest component required by RRA.

Response: Reclamation recognizes that there are various rates associated with the delivery of irrigation water, including, among others: contract rate, operation and maintenance rate, cost-of-service rate, and the full-cost rate. The definition of ''full-cost charge'' includes construction and interest, but not the operation, maintenance, and replacement component. The term ''full-cost rate'' includes the operation, maintenance, and replacement component as well as the components included in the ''full-cost charge.'' The term ''nonfull-cost rate'' does not consistently include the same components. Accordingly, to state that the full-cost charge always represents the difference between the nonfull-cost rate and the full-cost rate would be incorrect for purposes of how ''full-cost charge'' is used in these rules.

Comment: The use of the term ''beneficial interest'' in the definition of ''indirect'' is ambiguous. The definition should be clarified so that it does not allow the interpretation that a lender's security interest could be considered a beneficial interest. This can be accomplished by adding another sentence as follows: ''A security interest in a legal entity or in a land parcel shall not be considered an indirect interest or a beneficial interest under these regulations.''

Response: This comment has been accommodated in the final regulations. Reclamation agrees that if a lender strictly has a security interest in a legal entity or a land parcel, that interest will not be considered a beneficial interest for purposes of attribution of the land.

Comment: The ''irrigable land'' definition would be improved by citing the classification standards specified in the Class 1 equivalency section of the rules.

Response: This comment has not been accommodated in the final regulations. The classification standards have a different purpose from what is intended in the definition of irrigable land. Specifically, ''irrigable land'' refers to the general concept of whether land can be irrigated. The Class 1 equivalency classification standards are much more precise, pertaining to the productive potential of the land. The commenter's suggestion, if incorporated, could create confusion.

Comment: A commenter asked if the definition of ''irrigable land'' includes all land that has the legal right to receive water, the practical possibility of obtaining a legal right, or just the physical possibility of receiving the water presently or in the future? Another commenter suggested that if the definition included all such land, it represented a change from current Reclamation policy.

Response: All land which is defined as irrigable must be included on RRA forms and counted against the landholder's acreage limitation entitlements. This includes all land that has the legal right to receive irrigation water, the practical possibility of obtaining a legal right, or just the physical possibility of receiving irrigation water presently or in the future. This is not a change from current Reclamation policy. If landholders do not want to report land for which irrigation water cannot be received, they need to work with their districts and Reclamation to have any unbuilt features removed from Reclamation's books. It should be noted that often land in areas not yet served with irrigation water is used to further distribute the construction costs and thus lower the per acre full-cost rate. In such cases, the landholders and districts will have to decide if higher full-cost rates are an acceptable trade-off for not having to include certain land on RRA forms.

Comment: Terms such as ''irrigable land,'' irrigation land,''and ''irrigation water,'' have common meanings that are different than what the regulations described for these terms. Therefore, other terms should be used.

Response: While these terms have different meanings in different contexts, they are clearly defined in the definitions section for use when administering or complying with these regulations. Reclamation has tried to make the definitions consistent with other uses of the terminology to the extent possible.

Comment: The ''irrigation water'' definition goes beyond the definition in the existing rules and the RRA. By deleting the phrase ''pursuant to a contract with the Secretary'' from the definition, Reclamation is going beyond what is provided in the RRA and is attempting to extend its own regulatory authority without congressional approval.

Response: Reclamation has changed the definition of the term ''irrigation water'' in the final regulations to make it consistent with the RRA definition. Any land used for agricultural purposes that receives irrigation water subject to acreage limitations must be counted against the landholder's acreage limitation entitlements. Otherwise, such landholders could evade the acreage limitation provisions by applying such water on, for example, ineligible land.

Although Reclamation has made a change to the definition of ''irrigation water'' to include the reference to contracts with Reclamation, Reclamation requires any land receiving irrigation water subject to acreage limitation to be included on the RRA forms (see the definition of ''irrigation land''). Land receiving such water in violation of contract provisions will count against the landholder's acreage limitation entitlements.

Comment: To clarify treatment of involuntarily acquired land, the definition of ''landholder'' should be changed by adding: ''Landholding includes involuntarily acquired land, although involuntarily acquired land is not counted as part of a landholder's nonfull-cost entitlement, pursuant to the applicable regulations concerning involuntarily acquired land.''

Response: This comment has not been accommodated in the final regulations. Section 426.14 concerning involuntarily acquired land clearly provides which water rate will be applied. Such land must be included on RRA forms. Reclamation believes the proposed addition would only confuse the issue of what land needs to be included on RRA forms, what water rate should be charged, etc.

Comment: Reclamation received many comments on the proposed change to the definition of ''lease'' and criteria to determine whether a farming arrangement is considered a ''lease.''

Response: Reclamation has not changed its interpretation of the term ''lease'' from the prior rules. It continues to treat as leases, arrangements which transfer ''economic risk'' and ''use or possession'' of land. To accommodate this change from the proposed rules, Reclamation used the language from § 426.7(a)(1) in the prior regulations in the final rule definition of ''lease.'' Under existing policy, Reclamation examines economic risk, use, possession, who received the profits from the farming operation, and who is responsible for payment of the operating expenses, in determining if an arrangement is a lease. Since the commenters were generally supportive of how Reclamation presently examines farming arrangements Reclamation wanted to make sure that the current practices are clearly incorporated in the regulations.

Comment: Some commenters suggested that custom operators, employees, lenders, etc. should be categorically exempted from the definition of a lease, while another commenter wanted to know at what point a custom operator becomes a lessee under the proposed definition of lease?

Response: Reclamation will not consider the provision of a single service alone to be a lease for purposes of applying the nonfull-cost entitlement. While such operators have the use of the land while they are providing their services, they do not assume any of the economic risk associated with the production of the crop. Businesses and individuals providing multiple custom services will be considered on a case-by-case basis to determine whether they are lessees. In addition, lenders who only have a security interest in the farming operation will not be considered to be lessees.

Comment: Several commenters believed that forward contracting arrangements should be categorically exempted from the definition of a lease.

Response: A typical forward contract is one in which the landholder is guaranteed a market and price for specified production; the individual or entity that will receive the crop does not participate in any aspect of the actual growing of the crop. As such, a typical forward contract is not a lease for acreage limitation purposes because the contractor does not have use or possession of the land.

Nevertheless, Reclamation did not provide a categorical exemption in the final regulations. As under the prior rules, each forward contracting arrangement will be considered on its own merits in order to determine whether it is a lease. Based on past experience, Reclamation expects the vast majority of forward contracting arrangements will not be considered leases, some arrangements will require minor modifications, and a few arrangements will be found to be leases.

Comment: A few commenters suggested that family farming arrangements should be exempted from being a lease where only a few family members make the farming decisions, but the economic risk is shared by all the members of the family.

Response: This comment was not accommodated. Whether a family farming operation will be considered to be a leasing arrangement will have to be determined on a case-by-case basis. Congress did not exempt family farms from the acreage limitation entitlements.

Comment: ''Lease'' needs to be redefined in order to comply with and enforce the intent of acreage limitations.

Response: Reclamation determined that the proposed definition of ''lease'' would not efficiently meet Reclamation's intended goals and objectives. Reclamation believes the intent of reclamation law will be better met with the application of the criteria found in the prior rules. Reclamation agrees with comments that altering the definition of a lease in itself is an inadequate means of addressing the concerns about efforts to avoid the acreage limitation provisions of the RRA and could have produced unintended consequences. As a result of its review of the proposed rulemaking and the widely divergent comments received from the public, Reclamation has determined that seeking further public comment to an advance notice of proposed rulemaking is appropriate.

Comment: A concern was expressed that for trusts the trustee must make farming decisions and, thus, might be considered to be the lessee, with application of the nonfull-cost entitlement.

Response: Under the proposed rule, some trustees might have been treated as lessees. As discussed in the advance notice of proposed rulemaking published today, Reclamation is concerned about how trusts are treated. Under the rules adopted today, trustees will not be subject to application of the nonfull-cost entitlement with regard to land held in trust if the trust meets the criteria specified in § 426.7 of the final regulations. However, Reclamation will publish an Advance Notice of Proposed Rulemaking on this subject with respect to some trusts with landholdings (owned and leased) in excess of 960 acres.

Comment: The terms ''organization'' and ''association'' do not have a clearly understood legal meaning and should be deleted from the definition of ''legal entity.''

Response: This comment has been partially accommodated in the final regulations in that ''association'' has been removed. Reclamation finds ''organization'' to be widely understood.

Comment: The inclusion of the term ''trust'' in the definition of ''legal entity'' will cause problems. If this inclusion is solely to ensure it is understood that RRA forms must be submitted for trusts, then that concept should be included in the Information Requirements section.

Response: This comment was partially accommodated in the final regulations. The term ''trust'' was removed from the definition of ''legal entity.'' A sentence was added to the end of this definition that states trusts will only be considered as legal entities with regard to the RRA forms requirements. Reclamation does not intend to provide trusts with any acreage limitation entitlements, and therefore, they are not subject to the limitations inherent in those provisions.

Comment: In the definition of ''nonexempt land,'' it should be irrigable AND irrigation land, not irrigable OR irrigation land, since both are used in calculating the amount of nonexempt land.

Response: This comment has been accommodated in the final regulations. Reclamation has added the word ''all'' and adopted the word ''and'' to indicate that both types of land must be included when calculating the amount of nonexempt land. This does not change Reclamation's longstanding interpretation of this term.

Comment: The definition of ''part owner'' should use the term ''legal entity'' not just ''entity,'' unless a different meaning is intended.

Response: This comment has been accommodated in the final regulations.

Comment: The definition of ''part owner'' should be clarified with another sentence that states: ''A holder of a security interest in a legal entity or land owned by a legal entity shall not be considered a part owner under these regulations.''

Response: This comment has been accommodated in the final regulations.

Comment: The definition of ''nonresident alien'' should be modified by adding ''a nonresident alien will be treated as the indirect owner of the land of which he is the beneficial owner through direct or indirect corporate (direct or indirect) ownership.''

Response: Reclamation does not feel this addition is fully explanatory or necessary. Based on the comments received concerning the nonresident/foreign entity provisions, Reclamation added a new section to the rules to address the entitlements of such landholders. Please see the comments for the new § 426.8.

Comment: A definition of ''Preamble'' is needed that states: ''Means the introduction to these regulations as concurrently published in the Federal Register, the text of which (including the examples) are designed to be read as the official explanatory material by Reclamation of these regulations.''

Response: The preamble accompanying the rules constitutes explanatory material even without a definition.

Comment: The definition of ''resident alien'' is unworkable due to the test used (Internal Revenue Code). Under that provision, a person can drift in and out of resident alien status. Reclamation should use the ''green card'' test instead.

Response: Reclamation considered using Internal Revenue Code section 7701(b) as part of the 1987 rulemaking. Reclamation was aware that changes to the code were imminent as part of a 1986 statute. No major changes have occurred to the cited section since. Reclamation believes the definition with the reference to the Internal Revenue Code section is acceptable. One of the tests utilized by the cited section is the so-called ''green card'' test.

Comment: Because of the way ''qualified recipient'' is defined in the RRA, Reclamation should not apply the excess land provision to anyone who holds less than the discretionary provisions entitlement. But, do not let such landholders receive water on land held above the prior law entitlements, unless they become subject to the discretionary provisions as provided for in § 426.3.

Response: The respondent appears to be requesting that Reclamation establish a new application of the acreage limitation entitlements. Specifically, the only ownership entitlements would be those created by the RRA under the discretionary provisions while the restrictions of RRA Section 203(b) would apply with regard to nonfull-cost entitlements. By doing this, certain landholders could sell land that is, in fact, excess under prior law provisions without price approval.

Reclamation has not accommodated this comment in the final regulations. If a landholder would like the benefits that are associated with the discretionary provisions, specifically the larger ownership entitlement, then that landholder must conform to the discretionary provisions by making an irrevocable election or convincing the district to conform to the discretionary provisions.

Comment: The term ''registered'' does not have a clear legal meaning when applied to legal entities. It should be deleted and replaced with either ''created'' or ''established'' throughout the regulations.

Response: Reclamation has replaced ''registered'' with ''established'' throughout the final regulations.

Comment: What is meant by ''natural person''?

Response: A ''natural person'' is a living human being.

Section 426.3 Conformance to the Discretionary Provisions

The section in the prior regulations, entitled Authority, is removed because it is redundant with the authorities statement that immediately follows the table of contents. The new § 426.3, *Conformance to the discretionary provisions*, replaces the prior § 426.5 and adds a more precise description of the section's contents. This section has been generally rewritten to eliminate redundancy with other sections and paragraphs within the section. The main purpose of this section is to present what actions taken by a district or individual landholder will result in the district or landholder conforming to the discretionary provisions. The section also presents information on the effect of conforming to the discretionary provisions in terms of the rate that will be charged for irrigation water.

The final rules retain the more general criteria provided in the prior rules with modifications to remove provisions that are no longer applicable. Unlike the proposed rule, specific contract actions are not specifically listed.

Actions pursuant to the Reclamation Safety of Dams Act of 1978 are added to the list of items not considered to provide additional and supplemental benefits, as provided by statute.

Paragraph (a) details under what conditions or actions an entire district will be considered to be subject to the discretionary provisions of the RRA. An addition has been made to these final rules as compared to the proposed rules in that (a)(2)(iii) has been revised to make clear that Reclamation will amend a contract to conform to the discretionary provisions if certain requirements are met. In addition, (a)(2)(iv) was added to make it clear that if a district wants to conform to the discretionary provisions it will not be required to make any other changes to its contract.

Paragraph (b) categorically describes the conditions under which districts remain subject to prior law.

A new standard RRA contract article is included under paragraph (c) to clarify any misconceptions concerning the applicability of the Acreage Limitation Rules and Regulations.

Paragraph (d), *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions*, of the final regulation has been rewritten for conciseness. The following examples illustrate the application of this paragraph:

Example (1). Assume Districts A, B, and C are members of a water conservancy district which entered into a master contract with the United States prior to October 12, 1982. The water conservancy district has allocated all the irrigation water made available to it under the master contract to Districts A and B, pursuant to pre-October 12, 1982, subcontracts with the conservancy district to which the United States is a party. The irrigation water is not made available to District C or any other districts or landholders within the water conservancy district. Consequently, Districts A and B are subject to the acreage limitation and pricing provisions of prior law. Districts A and B may amend their subcontracts to conform to the discretionary provisions without making

it necessary for the conservancy district or the other subcontracting entity with the conservancy district to so amend their contract or the subcontract.

Example (2). Assume District XYZ has a pre-October 12, 1982, contract with the United States for the delivery of irrigation water. The district also has allocated that irrigation water pursuant to subcontracts with six subcontracting entities. However, the United States is not a party to these subcontracts. A subcontractor may choose to conform to the discretionary provisions only if it makes the United States a party to the subcontract. Such action will not require the prior law master contractor or the other subcontractors to so amend.

Example (3). Assume District A, a master contracting agency, executes a water service contract with the United States after October 12, 1982. The irrigation water is to be delivered to only two of the eight member agencies within District A. Subcontracts are executed between District A, the United States, and each of the two member agencies to provide irrigation water service to the two member agencies. In this instance, the discretionary provisions become applicable to only the two member agencies which execute subcontracts with District A and the United States.

Paragraph (e), which is new, explains the effect on a landholder's status of a district becoming subject to the discretionary provisions. While this paragraph goes on to explain how Reclamation treats direct and indirect landholdings of nonresident aliens and foreign entities in districts conforming to the discretionary provisions, the final version of this paragraph has been revised to reflect the addition of the new § 426.8 that discusses entitlements for nonresident aliens and foreign entities.

Paragraph (f) expands on the prior rules' discussion of individual elections to address the effects of elections by part owners on entities and vice versa. It also explains how certain indirect landholders in districts with an amended contract can conform to the discretionary provisions by simply submitting a certification form.

Paragraph (g) provides that districts may rely on the information included on the irrevocable election form.

Paragraph (h) highlights how irrevocable elections made between April 12, 1987, and May 13, 1987, will be treated.

Comments Concerning § 426.3—Conformance to the Discretionary Provisions

Section 426.3(a)

Comment: The proposed rules seem to provide that Reclamation has discretion as to whether to accept a district's action to conform to the discretionary provisions.

Response: A change has been made to § 426.3(a)(2)(iii), to make it clear that if the stated requirements have been met, Reclamation will amend the contract to allow the district to conform to the discretionary provisions.

Comment: One commenter wanted the effective date of a district's request to conform to the discretionary provisions to be the date of Reclamation's approval, not the date of the district's request. This could avoid problems with the pricing of water, etc., if Reclamation should take some time to approve the request.

Response: This comment has not been accommodated in the final regulations. Reclamation believes the beneficial effect for landholders of conforming to the discretionary provisions outweighs the difficulties the district may encounter if a request should not be approved. It is in the district's control as to whether or not the criteria specified in § 426.3(a)(2) have been met when the district submits its request. If the criteria have been met, the district should consider itself subject to the discretionary provisions when it submits its request because Reclamation will approve that request.

Comment: Districts that have been paid out should not be again placed under the acreage limitation restrictions if they receive some additional or supplemental benefit.

Response: If a district is paid out, it is no longer subject to the acreage limitation provisions. A paid out district would normally enter a new contract if the United States provided new, additional, or supplemental benefits. New repayment contracts trigger the Discretionary Provisions under § 203 of the RRA.

Comment: Some commenters thought too much discretion remains as to what will be considered an additional or supplemental benefit that requires conformance to the discretionary provisions. All contract actions that provide for supplemental or additional benefits should require conformance to the discretionary provisions, no matter how minor the benefit. On the other hand, other commenters believed that a district that receives a supplemental benefit should not be required to conform to the discretionary provisions.

Response: The final regulations include both contract amendments and other types of contract actions as providing additional or supplemental benefits. However, some contract actions primarily benefit Reclamation, and Reclamation does not want to discourage such amendments. The statute requires, and these regulations implement, a program where only such actions which confer additional or supplemental benefits to the district require conformance with the discretionary provisions of the RRA.

Comment: Commenters suggested that in approving water transfers the transferees should pay a rate sufficient to eliminate any operating losses to the United States, and the language of the regulations should be changed to reflect this suggestion.

Response: The discussion of water transfers concerns only those made on an annual basis as they relate to additional and supplemental benefits. Reclamation's long standing policy has been to encourage efficient use of water through water transfers.

Comment: Water transfers should not be considered an additional or supplemental benefit if a portion of the transferred water is used for fish and wildlife purposes.

Response: This comment has not been accommodated in the final regulations. However, if the transfer only benefits fish and wildlife, then in most cases the transfer would not be considered an additional or supplemental benefit to the district.

Section 426.3(c)

Comment: The new paragraph in the standard contract article is not required or authorized by the RRA. However, if it should be retained, then it should include the rest of the language that was used in the Central Valley Project interim renewal contracts.

Response: Reclamation has accepted part of the commenters' suggested change. The accepted language assures Reclamation's contractors that Reclamation will make deliberative decisions.

Comment: Since the terms of Federal reclamation law include rules and regulations adopted pursuant to the Administrative Procedure Act, it is unnecessary to add reference to the rules and regulations within the first paragraph of the standard contract article.

Response: This comment has not been accommodated in the final regulations. The subject language may be unnecessary, but it has been retained for the benefit of those who may not be aware that the terms of Federal reclamation law encompass the regulations.

Comment: The reference to ''implied provisions'' in the new clause should be removed.

Response: Reclamation agrees that the standard contract article may not be clear. Reclamation has revised the standard contract article to ensure that all contract provisions may be

administered by replacing ''expressed and implied'' with ''all.''

Section 426.3(e)

Comment: Landholders are supposed to conform automatically to the discretionary provisions when a district conforms.

Response: In general, this is a true statement. However, the 1987 rules allowed indirect landholders in discretionary districts to choose between being subject to the discretionary or prior law provisions. This provision has been clearly stated on the cover of the RRA forms booklet and is continued under these final regulations.

Section 426.4 Attribution of Land

Section 426.4 in the prior regulations, *Definitions,* is renumbered as § 426.2. A new § 426.4, entitled *Attribution of land,* is intended to clarify how Reclamation attributes land to direct and indirect landholders. It does not change existing policy regarding how land is attributed for entitlement purposes, but sets forth a concise summary. No significant changes were made from the proposed rule.

Paragraph (a) establishes the general rule that individuals and entities cannot enhance their entitlements or eligibility through the creation or acquisition of legal entities. For example, a prior law recipient could not increase his or her 160-acre ownership entitlement (see § 426.5) by creating or acquiring an interest in a qualified recipient legal entity. Such a prior law recipient will need to conform to the discretionary provisions (through district contract action or individual irrevocable election) in order to realize an increase in his or her entitlements.

Paragraph (b) establishes that, for purposes of acreage limitation entitlements, owned land is attributed to each indirect landholder proportionally based on that landholder's interest.

Paragraph (c) establishes that leased land counts against the entitlements of both the owner and the lessee.

Paragraph (d) establishes that if a series of legal entities has ownership relationships with each other, Reclamation will attribute proportionately the land to each such entity. Paragraph (e) addresses how land that is owned by a landholder and then is indirectly leased by the same landholder will be counted by that landholder.

Paragraph (f) acknowledges that irrigation water cannot be delivered to a legal entity without benefiting all indirect owners of undivided interests in that entity; therefore, all such indirect owners must be eligible in order for the entity to be eligible.

If the interests of the entity's indirect owners are divided, however, then the district could deliver irrigation water to the entity without necessarily benefiting all such owners. In this situation, it may be possible to deliver irrigation water to a portion of the entity's landholding even if one or more of the entity's indirect owners is not eligible.

The following examples illustrate the application of § 426.4:

Example (1). Corporation A is a limited recipient that did not receive water on or before October 1, 1981, and therefore, is not entitled to receive irrigation water at a nonfull-cost rate (see § 426.6). Such an entity may not gain entitlement to receive irrigation water at a nonfull-cost rate by acquiring Corporation B, an entity that received water on or before that date. If the latter entity were so acquired, irrigation water could be delivered to the entities' landholding only at the appropriate full-cost rate.

If the entities' roles in the preceding example were reversed (that is, if Corporation B acquired Corporation A), the landholding of Corporation A could be irrigated only at the appropriate full-cost rate as long as Corporation A continued to exist. In this case, it should be noted that Corporation B, which is eligible to receive irrigation water at a nonfull-cost rate on up to 320 acres, could potentially receive nonfull-cost irrigation water on other land in its holding that is not held through Corporation A. However, any land held by or through Corporation A could be irrigated only at the full-cost rate.

If Corporation A were to go out of existence, then the land formerly held by Corporation A would be directly held by Corporation B and could be irrigated at the nonfull-cost rate on up to 320 acres, if so selected by Corporation B.

Example (2). Corporation C is a qualified recipient which owns and irrigates 500 acres. Corporation C is subsequently acquired by Corporation D, a limited recipient which received irrigation water on or before October 1, 1981, but which currently has no landholdings other than Corporation C's 500 acres. On the date of acquisition, Corporation C becomes a limited recipient because it benefits all the stockholders of Corporation D. Since Corporation C becomes a wholly owned subsidiary of Corporation D, all of its direct and indirect landholdings will be attributed against Corporation D's 640-acre ownership entitlement (see § 426.5) and 320-acre nonfull-cost entitlement (see § 426.6). Therefore, if all 500 acres are irrigated, the full-cost water rate must be paid for water delivered to 180 of those acres (500 acres − 320 acres).

Example (3). The trustees of five irrevocable trusts, each of which have six natural persons as beneficiaries, form a partnership that holds land subject to the acreage limitation provisions in a discretionary district. In order to determine if that partnership is a limited or qualified recipient, it is necessary to ascertain how many natural persons will benefit from the partnership. In this case, 30 natural persons will benefit (none of the trust beneficiaries benefit from more than one trust) and, therefore, the partnership has the acreage limitation status of limited recipient. Although the five trusts are not limited in the amount of land they can hold and receive irrigation water at the nonfull-cost rate (other than through the entitlements and holdings of their beneficiaries), the acreage limitation status of the partnership will limit how much land can be held through that entity by the trusts and receive such water.

Example (4). Assume Trust A has two beneficiaries, beneficiary A and beneficiary B. Beneficiary A has a 60 percent interest in the trust, and beneficiary B has a 40 percent interest. Trust A owns 800 acres of nonexempt land. Beneficiary A must attribute 480 acres toward her ownership entitlement, and beneficiary B must attribute 320 acres toward his ownership entitlement.

Example (5). Assume Corporation C wholly owns Corporation D, and that Corporation D owns a 60 percent interest in Corporation E. Corporation E leases 500 acres of irrigation land. Reclamation will attribute to Corporation E all 500 acres toward the company's nonfull-cost entitlement, and Corporations C and D must each attribute 300 acres toward their nonfull-cost entitlements.

Example (6). Attribution to both owner and lessee is demonstrated by Farmer A who owns 400 acres of irrigation land which she leases to Farmer B. Farmer A must count all 400 acres towards her ownership and nonfull-cost entitlements, and Farmer B must count all 400 acres towards his nonfull-cost entitlement.

Example (7). Farmer A owns 60 acres and leases that land to Corporation XYZ that leases a total of 200 acres. Farmer A also owns 50 percent of Corporation XYZ. Farmer A would claim his 60 owned acres, but would not have to claim the entire 200 acres leased by Corporation XYZ. Instead, Farmer A would claim 70 acres leased by Corporation XYZ (200 acres minus the 60 owned acres, times the 50 percent ownership interest). Accordingly, Farmer A would claim a total landholding of 130 acres. If Farmer B was the other part owner of Corporation XYZ and leased his 140 owned acres to that entity, his total claimed landholding would be 170 acres, which includes 30 acres leased by Corporation XYZ (200 acres minus the 140 owned acres, times the 50 percent ownership interest).

Example (8). Assume two qualified recipients, Farmer A and Farmer B, form a qualified recipient partnership with equal, undivided interests. Farmer A has no landholding outside the partnership, but Farmer B owns 960 acres of nonexempt and nonexcess land outside the partnership, and has therefore completed his ownership entitlement. The partnership has no remaining ownership entitlement, because any land irrigated by the partnership would cause Farmer B to exceed his ownership entitlement.

If, however, the partnership agreement in this example provided that the partners' interests were separable and alienable, the

partnership could receive irrigation water on that land attributable to Farmer A. It would need to be shown that Farmer B does not benefit from the receipt of irrigation water by the partnership.

Comments Concerning § 426.4—Attribution of Land

Section 426.4(b)

Comment: Change § 426.4(b)(2) of the proposed rule to read, ''Indirect landowners in proportion to the indirect beneficial interest they own in the entity that directly or indirectly owns the land.''

Response: This comment has not been accommodated in the final regulations. While Reclamation understands the addition of the word ''indirectly'' Reclamation does not believe it is necessary, because indirect landholders have beneficial interest in the direct landholder even if there are one or more intermediate entities in existence. It is the proportion of interest held in the direct landholder by the indirect landholder that determines attribution.

Section 426.4(c)

Comment: The provision in § 426.4 to attribute all direct and indirect interest in land to a landholder's nonfull-cost entitlement is supported. However, a fundamental flaw exists because the burden of proof is on Reclamation to show that a farm larger than 960 acres must pay full cost on the acreage above 960 acres. It is inappropriate to place this burden on the government. Rather the recipients should be required to show that they qualify using tax returns and other documentation as appropriate. Reclamation should operate under the assumption that any farm or operation larger than 960 acres must pay full cost on acreage above 960 until any entitlement to nonfull-cost water is clearly proven in writing.

Response: In fact, the burden of proof is with the landholder under both the final and prior rules. All landholders must submit RRA forms. If the forms indicate that a nonfull-cost entitlement is exceeded then full cost is applied. Farming operations that do not meet the definition of landholder are not required to submit RRA forms, because the statute does not support applying the acreage entitlements to them. Reclamation performs audits on all farming arrangements that exceed entitlements to ensure they are in fact not landholders. If any questions arise, the farm operators are required to submit documentation to prove they are not landholders.

Section 426.4(f)

Comment: The rules should not provide that if one part owner is ineligible to receive irrigation water, the entire landholding is ineligible.

Response: If one part owner is ineligible to receive irrigation water in an entity in which the interests of the part owners are not divided, then to allow the delivery of irrigation water to land held by that entity would result in the ineligible part owner receiving benefits to which that part owner is not entitled.

Section 426.5 Ownership Entitlement

Section 426.5 in the prior regulations, *Contracts,* is renamed ''Conformance to the discretionary provisions'' and renumbered § 426.3. The new § 426.5, *Ownership entitlement,* replaces § 426.6 of the prior regulations. This section summarizes the ownership entitlements of individuals and most types of entities, and has been rewritten for conciseness. This section makes no substantive change in the prior regulations.

All descriptions of what constitutes qualified, limited, and prior law recipients are deleted because they are redundant with the definitions found in § 426.2. The trust discussion has been placed in a new § 426.7. A new § 426.8 has been created to address acreage limitation entitlements for nonresident aliens and legal entities not established under State or Federal law. The only significant change between the proposed rule and this final rule is to paragraph (d) as explained below.

Paragraph (a) has been rewritten from the prior rules to achieve better organization and clarity. Included is language clearly stating that land leased from a public entity counts against the lessee's ownership entitlement. Moreover, the reference in the prior language to the regulation on Class 1 equivalency is deleted because that topic is addressed in the discussion of qualified and limited recipient entitlement.

Paragraph (b) discusses the ownership entitlement for qualified recipients, while paragraph (c) discusses the ownership entitlement for limited recipients.

Paragraph (d) discusses the ownership entitlement for prior law recipients. As in the proposed rule, this discussion is much more detailed than in the prior rules; specifically, the entitlements for surviving spouses and children are provided. The final rule includes a new paragraph (d)(3) that discusses how ownership entitlements for certain entities are calculated if the part owners interests are not equal.

The following table summarizes the ownership entitlements specified in this section:

If the landowner is a:	The size of his or her ownership entitlement is:	Basis of computation
Qualified recipient	960 acres or Class 1 equivalent	Westwide.
Limited recipient	640 acres or Class 1 equivalent	Westwide.
Prior law recipient and is a(n):		
Individual	160 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Husband and wife who jointly own equal interest.	320 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Surviving spouse	Up to 320 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Child	160 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Joint tenancy or tenancy-in-common, if interests are equal.	160 acres per tenant	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.

If the landowner is a:	The size of his or her ownership entitlement is:	Basis of computation
Partnership if interests are: alienable, separable, and equal.	160 acres per partner	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Partnership if interests are: not alienable or not separable.	160 acres total	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.
Corporation	160 acres	Westwide for land acquired after 12/6/79. District-by-district for land acquired on or before 12/6/79.

The following examples illustrate the application of § 426.5:

Example (1). Farmer A receives irrigation water on 160 acres owned directly in District X, a district subject to prior law. District X subsequently amends its contract to conform to the discretionary provisions. Farmer A automatically becomes a qualified recipient by virtue of the district's decision and is entitled to receive irrigation water on a maximum of 960 acres of nonexempt land in his ownership.

Example (2). Farmer B and her husband are a qualified recipient by virtue of an irrevocable election. They own in joint tenancy 960 acres of nonexempt land. As a qualified recipient, they may irrigate the entire 960-acre landholding. However, they have completed their ownership entitlement.

Example (3). Farmer C and Farmer D are a married couple, and each owns 480 acres of irrigation land under separate title in District A. District A has amended its contract to conform to the discretionary provisions. Even though the land is held in separate title, Farmer C and Farmer D as a married couple have reached the limits of their ownership entitlement as a qualified recipient.

Example (4). ABC Farms is a general partnership comprised of four individuals who are qualified recipients and who own equal interests in the partnership's 960-acre landownership. The land is located in District Z, which is subject to the discretionary provisions. Therefore, ABC Farms satisfies the requirements for a qualified recipient and may receive irrigation water for all 960 acres in its ownership. Moreover, the members of the partnership, as qualified recipients, may each receive irrigation water on a maximum of 720 acres in some ownership or ownerships other than ABC Farms.

Example (5). Corporation A is a qualified recipient receiving irrigation water on a landownership of 960 acres. Farmer Brown is also a qualified recipient who owns 25 percent of Corporation A and farms 800 acres of owned land using irrigation water. In this instance, Farmer Brown exceeds his individual ownership entitlement by 80 acres and must either divest an appropriate share of his ownership in Corporation A or designate 80 acres of his directly owned land as excess.

Example (6). Corporation B and Corporation C, wholly owned subsidiaries of Corporation D, each own 500 acres in District Z which has amended its contract to conform to the discretionary provisions. All three corporations are qualified recipients. The landholdings of Corporations B and C are counted against the entitlement of the parent corporation, Corporation D. Therefore, Corporation D has exceeded its 960-acre ownership entitlement by 40 acres, and 40 acres must be declared excess.

Example (7). AAA Land Company, a corporation benefiting more than 25 persons and registered in the State of California, owns 320 acres in District Y. In the absence of district action, the company makes an irrevocable election to conform to the discretionary provisions. Thereby AAA Land Company becomes a limited recipient and is entitled to receive irrigation water on 640 acres or less owned westwide.

Example (8). BBB Fertilizer Company is a corporation registered in Nebraska and directly owns 160 acres of nonexcess and 480 acres of excess land in District X, a district subject to prior law. District X subsequently amends its contract to conform to the discretionary provisions. BBB Fertilizer Company benefits more than 25 persons and therefore automatically becomes a limited recipient with a 640-acre ownership entitlement. BBB Fertilizer Company may therefore redesignate the 480 excess acres as nonexcess utilizing the process highlighted in § 426.12(b).

Example (9). Farmer G, a prior law recipient, owns 160 acres of irrigation land in each of four districts. None of the districts in which Farmer G owns land has amended its contract to conform to the discretionary provisions, and Farmer G held title to the land prior to December 6, 1979. Thus, Farmer G remains eligible to receive irrigation water on the 640 acres owned in the four different districts.

Note: If title to the irrigated land changes hands, the 160-acre westwide entitlement will automatically apply to the transferred land, assuming the new landholder is a prior law recipient.

Example (10). Farmer H owns 160 acres in each of two prior law districts, and all of the acreage is eligible for irrigation water by virtue of the fact Farmer H owned the land prior to December 6, 1979. On January 1, 1983, Farmer H purchased another 160 acres of nonexcess land which is located in a third prior law district. The land newly purchased in this district must be declared excess, except as provided for in § 426.12(d).

Example (11). Farmer I and spouse own 320 acres of irrigation land in each of two prior law districts, for a total of 640 acres. The couple purchased both parcels of land in 1976. They have not made an irrevocable election. Since the land was purchased prior to December 6, 1979, they are entitled to receive irrigation water on all 640 acres. The couple has reached the limit of their ownership entitlement.

Example (12). EFG Farms, a partnership composed of four individuals who hold equal, separable, and alienable interests in the partnership, owns 960 acres of nonexempt land located in District Y. District Y has not amended its contract to become subject to the discretionary provisions. EFG Farms and two of the partners are subject to prior law; the other two partners have made irrevocable elections. Neither EFG Farms nor any of the partners owns irrigation land outside the partnership. Based on these facts, each partner may own and receive irrigation water on a maximum of 160 acres through the partnership. Therefore, 640 of the EFG Farms' 960 acres are entitled to receive irrigation water; the remaining 320 acres must be declared excess. The two partners who have made irrevocable elections may each purchase and receive irrigation water on another 800 acres outside the partnership in order to complete their individual 960-acre ownership entitlement for qualified recipients.

Example (13). Farmer N and Farmer O form a corporation in which Farmer N owns a 60 percent interest and Farmer O owns a 40 percent interest. Neither individual owns land outside the corporation. Farmer N and the corporation are qualified recipients, but Farmer O remains subject to prior law. The maximum nonexempt acreage that the corporation can own as nonexcess is 400 acres (160 divided by 40 percent). If the corporation owned more than 400 nonexempt acres, this would cause Farmer O to exceed his ownership entitlement.

Example (14). Farmer P, a qualified recipient, owns 1,400 nonexempt acres and has designated 960 acres as nonexcess and eligible to receive irrigation water. In 1995, Farmer P irrigates only 800 acres; however, the entire 960 nonexcess acres are still counted against his ownership entitlement.

Example (15). Farmer Q, a qualified recipient, owns 640 acres receiving irrigation water. Farmer Q also owns 320 acres which are not in a district, but Farmer Q has individually entered into a 10-year contract with the United States for irrigation water for that land. All 960 acres receiving irrigation water must be counted for purposes of determining ownership entitlement.

Example (16). Farmer R, a prior law recipient, owns 160 nonexempt acres. However, only 120 acres were deemed irrigable and eligible to receive irrigation

water. Some years subsequent to this determination, Farmer R installed a center pivot irrigation system and now irrigates 160 acres with the same amount of water as he once used to irrigate 120 acres. For purposes of ownership entitlement under the RRA, all 160 acres must be counted.

Comments Concerning § 426.5—Ownership Entitlement

General

Comment: Why is the government trying to get farmers to reduce their landholdings down to 960 acres?

Response: The acreage limitations place no restrictions on how much land a farmer owns or leases. Rather, it limits how much owned land may receive irrigation water and how much leased land may receive such water at subsidized rates. The concept of limiting owned land that can receive irrigation water has been in existence since 1902. Originally that provision was intended to restrict land speculation at Reclamation irrigation projects. The concept of limiting the amount of leased land that can receive irrigation water at a subsidized rate was enacted in 1982. These regulations do not provide for any new limitations on owned or leased land.

Comment: If ownership entitlements are not violated, the landowner can receive irrigation water, but at the full-cost rate, plus administrative fee which is the actual cost of delivering the water, including the cost of constructing project facilities and interest on those expenditures.

Response: This commenter appears to suggest that landowners are entitled to or willing to receive Reclamation irrigation water on eligible land provided they pay the full-cost rates. Only limited recipients have ownership entitlements that are higher than nonfull-cost entitlements. In the case of limited recipients, they may receive water at the full-cost rate if they exceed their nonfull-cost entitlement, but that does not include the administrative fee (see § 426.20). What the respondent believes is part of the administrative fee is in actuality part of the full-cost rate.

Section 426.5(a)

Comment: Prior law partnerships where the partners have unequal interests, but which are separate and alienable, have an entitlement determined by the relative interest held by the partners. The partner with the largest percentage interest in the partnership is entitled to hold 160 acres through the partnership. Partners with lesser percentage interests are entitled to hold a proportional amount of land through the partnership. It may clarify the intent here to simply delete the reference to equal interest, leaving the requirement that the partnership interest be separable and alienable.

Response: Reclamation wants to make it clear that the only prior law partnerships that may benefit from 160 acre entitlement per part owner are those that have separable, alienable, and equal interests. If Reclamation allowed partnerships with unequal interest to benefit from the 160-acre per part owner arrangement, some part owners could receive benefits to which they are not entitled. Section 426.5(d)(3) was added to explain what will happen if the interests are not equal.

Section 426.6 Leasing and Full-Cost Pricing

Section 426.6 in the prior regulations, *Ownership entitlement,* is renumbered as § 426.5. The new § 426.6, *Leasing and full-cost pricing,* replaces § 426.7 of the prior regulations. This section describes the conditions under which full-cost charges are applied and describes how full-cost rates are determined. No substantive change to these provisions is intended.

The paragraph in the prior regulation on what constitutes a lease has been deleted because it more properly belongs in the definition section. As in the proposed rules, the term *irrigation land* is used more extensively in the discussion of nonfull-cost entitlements, as compared to the prior rules. The reference to exempt land that was included in the prior rules is deleted since use of the term *irrigation land* automatically excludes exempt land.

Under the discussion of nonfull-cost entitlements of qualified, limited, and prior law recipients, the sentences found in the prior rules describing various types of land not subject to full-cost pricing have been deleted to eliminate redundancy with other sections. As in the proposed rules, land subject to recordable contracts is no longer addressed in this section, but is solely discussed in § 426.12; exempt land is no longer discussed in this section because it has been excluded through use of the term *irrigation land;* and involuntarily acquired land is no longer discussed in this section, but is solely addressed in § 426.14.

The paragraph found in the prior rules on multidistrict landholdings is deleted because it is redundant with the discussion of this topic in § 426.3.

Paragraph (a) details what requirements a lease must meet. If a lease does not meet one or more requirements of a lease, then the land is ineligible to receive irrigation water. As such, the district may not deliver irrigation water to the land and the landholder(s) may not accept delivery of such water. Reclamation, however, will attribute that land to the would-be lessee's nonfull-cost entitlement. The proposed rule added to the requirements found in the prior rules. These additional requirements include: a legal description of the land; the lease must be signed by all parties to the lease; and the lease must include the dates of signatures. The final rules do not include the signature date requirement, and specify that the legal description need not be any more specific than that required to be included on the RRA forms. The final rules also specify that leases in effect on the effective date of these regulations do not have to meet these two new requirements until such leases are renewed.

Paragraph (b) details the nonfull-cost entitlements for qualified, limited, and prior law recipients. Paragraph (c) details how the nonfull-cost entitlement will be applied, while paragraph (d) details what types of land will be counted in determining if a landholder has exceeded a nonfull-cost entitlement.

Paragraph (e) examines what land may be included in selecting nonfull-cost and full-cost land. A revision to what had been included in (e)(2) of the proposed rules was made to explain that the selection of full-cost and nonfull-cost land is binding after irrigation water is received on a parcel until the landholder has completed receiving irrigation water westwide for the water year. This language replaces the proposed version that made the selection binding for the remainder of the water year.

Paragraph (f) states that if land is selected as full-cost, that selection is binding on all landholders. Paragraph (g) discusses how land that is subleased is treated.

Paragraph (h) provides how full-cost charges are calculated, while paragraph (i) discusses how full-cost rates are levied on a per-acre basis and a per acre-foot basis.

Paragraph (j) provides for the disposition of revenues obtained through full-cost pricing. This paragraph has been changed from the proposed version to provide in (j)(1)(iii) that any capital component of full-cost revenues will be credited to project repayment where applicable. In addition, (j)(2) has been revised in the final version to state that certain charges assessed by the district will not have to be turned over to Reclamation, when such assessments were made through an illegal delivery of irrigation water.

The following examples illustrate the application of § 426.6:

Example (1). Farmer A, a qualified recipient, receives irrigation water on 900 of the 960 acres of nonexempt land in his ownership in District X. Farmer A leases and receives irrigation water on another 320 acres in District Y. Since Farmer A receives water on 260 acres over and above his nonfull-cost entitlement, he must select 260 acres of owned land, leased land, or a combination of both, and pay the full-cost rate for water delivered to that land.

Example (2). Farmer B, a qualified recipient, owns and receives irrigation water on 960 acres in District X. Farmer B decides to lease all 960 acres to another qualified recipient, Farmer C. Farmer C, however, already farms 960 acres receiving irrigation water. Therefore, Farmer C would be eligible for nonfull-cost rate irrigation water on only 960 acres of the 1,920 acres he is farming.

Example (3). Farmer D has made an irrevocable election and owns and receives irrigation water on 960 acres. Farmer E is subject to prior law and owns and receives water on 160 acres. Farmer D hires Farmer E to operate Farmer D's equipment in performance of all the physical farm work on Farmer D's 960 acres. Farmer E receives compensation for such services, which does not consist of a share of the crop and is not based, in advance, on the degree of economic success or failure of the production or marketing of the crop. This arrangement between Farmer D and Farmer E does not constitute a lease because Farmer D has retained the economic risk. Accordingly, Farmer E does not have to count Farmer D's 960 acres against his nonfull-cost entitlement.

Example (4). Assume the same facts as in example 3 of this section, except that Farmer E receives a portion of the crop for her services. This arrangement between Farmer D and Farmer E constitutes a lease because it constitutes sharecropping, and all sharecropping arrangements are considered to be leases. Therefore, Farmer E has exceeded her nonfull-cost entitlement by 960 acres and must pay full cost for water delivered to 960 acres of her landholding.

Example (5). Landholder F, a qualified recipient, receives irrigation water on 960 acres of owned land in District X and 800 acres leased in District Y. At the beginning of the water year, Landholder F selects 360 owned acres plus 600 leased acres to receive irrigation water at the nonfull-cost rate. He pays the full-cost rate for water delivered to the remaining 800 acres. In July, Landholder F terminates the lease on the 600 acres of leased land which are part of his nonfull-cost entitlement. However, since nonfull-cost acreage is counted against one's entitlement on a cumulative basis during any 1 water year, Landholder F has already reached the limits of his nonfull-cost entitlement for this water year. Therefore, Landholder F may not replace in that water year those 600 nonfull-cost acres, even though they no longer receive irrigation water, with 600 acres from his full-cost land. Landholder F also must pay the full-cost rate for irrigation water delivered to any new land he irrigates during that water year.

Example (6). Mr. and Mrs. G own 320 acres of eligible land in each of two districts and 160 acres in a third district. All three districts remain subject to prior laws as do Mr. and Mrs. G. All of this land was purchased prior to December 6, 1979. In addition, Mr. and Mrs. G lease 100 acres from another party. All 800 acres of owned land is eligible to receive irrigation water at the regular contract rate, because it is within the couple's 320-acre per district entitlement for land purchased before December 6, 1979. However, the 100 leased acres can receive irrigation water only at the full-cost rate, because it exceeds the couple's maximum nonfull-cost entitlement of 320 acres. The fact that the couple's owned land was acquired prior to December 6, 1979, has no bearing on their nonfull-cost entitlement computation.

Example (7). ABC Farms, an entity benefitting more than 25 natural persons, remains under prior law. It owns and was receiving irrigation water on 160 acres in District X prior to October 1, 1981. ABC Farms also owns and irrigates 480 acres in another prior law district which are subject to a recordable contract. ABC Farms may continue to receive irrigation water at the nonfull-cost rate on its entire landholding until the end of the recordable contract period. At that time, if ABC Farms remains under prior law, only 160 acres in District X may continue to receive irrigation water. If ABC Farms makes an irrevocable election prior to the maturity of the recordable contract, it may amend the recordable contract to allow it to own and receive irrigation water on all 640 acres owned. Upon electing, ABC Farms may receive irrigation water at the nonfull-cost rate on 320 acres, but it must pay the full-cost rate on the 320 acres by which it has exceeded its nonfull-cost entitlement.

Example (8). CDE Farms, a limited recipient, owns 640 acres of land eligible to receive irrigation water. The purchase of the land took place after October 1, 1981, and CDE Farms was not receiving irrigation water on any other land on or before October 1, 1981. Therefore, in order for CDE Farms to receive irrigation water for any nonexempt land, it must pay the full-cost rate for that water.

Example (9). The XYZ Corporation, a limited recipient, owns 640 acres of irrigation land in District A. Since the corporation was receiving irrigation water prior to October 1, 1981, it is entitled to irrigate 320 acres at the nonfull-cost rate and 320 acres at the full-cost rate. If the corporation were to lease the owned land subject to full cost to another landholder, the full-cost rate would still apply.

Example (10). Farmer I and his wife lease 640 acres of irrigation land in District X and another 640 acres of irrigation land in District Y. Districts X and Y have not amended their contracts to become subject to the discretionary provisions and Farmer I and his wife have not made an irrevocable election. Since the couple has exceeded their 320-acre nonfull-cost entitlement by 960 acres, Farmer I and his wife must select 960 acres in their landholding and pay the full-cost rate for water delivered to that land.

Example (11). Four brothers hold equal, separable, and alienable interests in a partnership they formed. The partnership owns 160 acres of irrigation land in District X and also leases another 320 acres from another party in District Y. The partnership and both districts remain subject to prior law. Since the partnership's landholding is within its 640-acre nonfull-cost entitlement (160 times 4), no full-cost charges will be assessed to water delivered to any land in the holding.

Example (12). Farmer J, a prior law recipient, owns 5,000 acres of irrigation land in District X, 4,900 of which are under recordable contract. He also receives irrigation water on another 320 acres which he leases in this same district. Thus, Farmer J is receiving irrigation water on 5,160 acres (5,320 minus 160) in excess of his nonfull-cost entitlement. However, his recordable contract land is not subject to full-cost pricing; therefore, Farmer J must select 260 acres (5,160 minus 4,900) for full-cost pricing. Although his recordable contract land is not subject to full-cost pricing, Farmer J may, at his option, select part or all of the 260 full-cost acres from the land under recordable contract in lieu of his nonexcess or leased land.

Example (13). Farmer K, a qualified recipient, owns 960 acres receiving irrigation water in Alpha Irrigation District. Farmer K also leases 100 acres receiving irrigation water in Alpha Irrigation District from another party. Alpha Irrigation District's repayment contract specifies an annual assessment of $5 per irrigable acre. Alpha Irrigation District's annual full-cost rate is calculated to be $15 per irrigable acre. Therefore, Farmer K's total water charge for that year is (960 acres times $5) plus (100 acres times $15), for a total of $6,300.

Comments Concerning § 426.6—Leasing and Full-Cost Pricing

General

Comment: Family farm ownerships should generally be excluded from full-cost pricing.

Response: The RRA does not include an exemption from application of the nonfull-cost entitlements for family farms. However, most family farms do not exceed the nonfull-cost entitlement level; therefore, the majority do not face application of full-cost pricing.

Comment: The definition of leasing should be coordinated with that used by the Farm Service Agency (FSA). FSA will not allow 10-year leases.

Response: Reclamation works with other Federal agencies to the greatest extent possible to facilitate consistent program administration and enforcement. However, the purposes of Reclamation's and FSA's programs are different. The acreage limitation program is intended to limit the distribution of benefits (irrigation water) that is otherwise generally available. The programs provided by the Department of Agriculture generally

provide farmers, in the form of crop payments, benefits that are not otherwise available. As for the length of the lease, the RRA specifically allows for long term leases (up to 10 years, except for perennial crops that can be for up to 25 years depending on the crop), but does not require any minimum term.

Comment: The annual reports of acreage owned and/or leased should be made available for public review. That is the only way it can be determined if lessees are within the limitations.

Response: Reclamation does not prepare an annual report of acreage owned or leased. The preparation of such a report would be expensive and there has been no interest in such a report generally expressed by the public.

Comment: Any increase in full-cost revenues should be used for rural community development where the proposed rules have an impact on the community.

Response: Reclamation does not have the authority to expend funds for purposes that are not authorized or appropriated by the Congress. Generally, all monies received are credited to the Reclamation Fund.

Section 426.6(a)

Comment: The proposed rules enumerate seven conditions or requirements for a lease. The requirements are very specific and rigid and seem to go beyond Reclamation's legitimate interest in being able to establish the existence of a bona-fide lease. It may be more practical and realistic to view these factors as what may be considered in the review of a lease instrument. Reclamation should allow itself and the landholder some flexibility in this area.

Response: The RRA provides that leases must be in writing and must not exceed certain time limitations. In addition, Section 206 of the RRA requires lessees to tell Reclamation about their lease, including the term of the lease, the number of acres leased and whether the rent paid reflects the reasonable value of the irrigation water to the productivity of the land. Reclamation needs to establish the effective date, legal description, people involved in the lease, and values, in order to verify the information required by the statute and to effectively administer the program.

Comment: Several commenters requested that Reclamation delete or amend certain of the requirements a lease must meet. These included the deletion of the signature dates requirement, clarification of what would be an acceptable legal description, and changes to the requirement concerning dates when rent is due.

Response: The requirement for signature dates has been deleted. The other suggested changes have been accommodated with some minor modifications, since the changes can be made without affecting Reclamation's ability to administer and enforce the program.

Comment: The RRA and § 426.7 require a lease to be in writing even if it is not for more than 1 year. This requirement contravenes State law that allows oral leases provided they do not exceed 1 year in length.

Response: Section 227 of the RRA specifically states that all leases must be in writing. No exceptions are made for leases that have a term of less than 1 year. Therefore, if a lessee wants to receive irrigation water from Reclamation, then the lease must be in writing.

Comment: This provision should specify whether leases currently in effect prior to the effective date of these regulations must conform to the conditions set for them in § 426.6(a). Will the new requirements be applied retroactively?

Response: Most of the conditions listed have not changed from the prior rules and, therefore, Reclamation has provided no grace period for those conditions. However, Reclamation has added § 426.6(a)(8) that exempts leases in existence on the effective date of these regulations from meeting two of the conditions until such leases are renewed. These conditions are the signature and legal description requirements.

Comment: What happens if a lease is not in writing? What if some of the other lease requirements are not met?

Response: The lease would not be a valid lease for acreage limitation purposes. Typically, Reclamation would provide an opportunity for the problem to be corrected. If the problem is not rectified, then the land would be ineligible to receive irrigation water. In addition, the compensation rate would be applied to any irrigation water previously delivered under the lease to the land in question because the land was not eligible to receive irrigation water.

Comment: So long as there is no attempt to defraud, any parties to a lease should be given 30 days to amend a lease that fails to fully comply with these requirements.

Response: Reclamation's policy is to provide a 30-day opportunity to correct leases that do not meet certain requirements.

Section 426.6(e)

Comment: Section 426.6(e)(2) creates a problem due to the difference between ''crop year'' and ''water year.'' The proposed rule would limit redesignation to a particular water year and would appear to preclude or impede lease changes at any time of the year other than the end of the water year. This should be changed to provide that a redesignation is permitted once a year, without limitation to a crop year, water year, or calendar year.

Response: In order to be sure the readers of this Preamble are not confused, the term redesignation applies to excess land. Redesignations are not permitted unless the criteria provided in § 426.12–Excess Land-are met. Reclamation believes the commenter is in fact referring to the reselection of nonfull-cost and full-cost land. Reclamation has retained the term ''water year,'' as that is the term used in the prior rules. However, Reclamation has defined that term in the definitions section (§ 426.2), and made it clear in § 426.6(e)(2) that once a landholder has completed receiving irrigation water westwide for a water year, the selection of nonfull-cost land can be changed.

To allow reselections of land any time during the year, after the landholder has started to receive irrigation water on the land, and at a time chosen by each landholder would make the program extremely hard to administer both by the districts and Reclamation. Such a change would allow each landholder to define his or her own water year for purposes of application of the nonfull-cost entitlement. Thus, Reclamation and districts would have to track each landholder's ''year'' to ensure a landholder did not receive benefits to which he or she is not entitled.

Comment: Some commenters noted that a farmer should be able to irrigate two crops in any 1 calendar year, receiving water on the same land. In fact, the rules should take into consideration cumulative counting of acres where 2 crop years overlap in a calendar year.

Response: Reclamation's regulations do not address the number of crops which may be raised in 1 year. Acreage limitations apply to the landholding, not to the amount of irrigation water a landholder may receive. The acreage limitation provisions do not restrict the delivery of irrigation water to any acreage that is eligible land, regardless of the number of crops planted in any 1 year.

Section 426.6(h)

Comment: A full-cost rate with no interest subsidy should be developed

and applied to all foreign investors and corporations.

Response: The full-cost rate is defined by the RRA. Reclamation lacks authority to develop additional full-cost rates to be applied to select groups of landholders.

Section 426.6(j)

Comment: This section of the regulations should be clarified that for revenues collected through full-cost pricing, the capital component of any such rate should be credited to project repayment if applicable and not recovered to the Reclamation Fund.

Response: This suggestion is consistent with Reclamation practice. Reclamation added to § 426.6(j)(1)(iii) to make it clear that the capital component is to be credited to project repayment if consistent with contract, statute, and regulation.

Section 426.7 Trusts

Section 426.7 of the prior regulations, *Leasing and full-cost pricing*, is renumbered as § 426.6. Section 426.7, *Trusts*, is a new section devoted to describing the requirements for trusts and how land held in trust will be attributed for acreage limitation purposes. Generally, this new section does not alter existing Reclamation policy regarding trusts, but includes some existing policies that are not referenced in the prior regulations; specifically, attribution of land held in trust if the trust does not meet requirements specified in the regulations. Any changes between the proposed and final regulations are noted below. In addition, Reclamation is publishing an advance notice of proposed rulemaking to solicit comments on future changes to rules regarding trusts.

During this rulemaking, Reclamation received a number of comments regarding the compliance of large trusts with the acreage limitation provisions of the RRA. Comments expressed a variety of viewpoints, including the assertion that some trusts with landholdings in excess of 960 acres may circumvent the requirements of Federal reclamation laws. Through the advance notice of proposed rulemaking, the Department will invite comments and suggestions on: (1) Whether to limit nonfull-cost water deliveries to large trust arrangements that exceed 960 acres; (2) the criteria used to determine whether landholdings (owned and leased land) in excess of 960 acres total, operated under a trust agreement, should be eligible to receive non-full cost water deliveries; (3) whether Reclamation project non-full cost water deliveries to such large scale trusts are consistent with the principles of Federal reclamation law; (4) the appropriate criteria and standards to be applied to such trusts, implementation of the criteria and standards; and (5) the extent of the Department's statutory authority to address this issue. For example, what is the extent of the Department's legal authority to regulate: (a) future trusts, (b) trusts established from 1982 to the present, and (c) trusts established prior to 1982. See today's notice in the Federal Register.

Paragraph (a) defines the three categories of trusts: irrevocable; grantor revocable; and otherwise revocable. The final rules add to the definition of *irrevocable trust* to make clear that if, upon termination of the trust, the lands held by trust will return to the grantor, then the trust must be considered to be a grantor revocable trust for acreage limitation purposes. The definition of *grantor revocable trust* has also been revised in the final rules to make it consistent with the other definitions in this paragraph.

The effects of inclusion or absence of required elements of each category of trust are described in paragraph (b).

Paragraph (b)(1) establishes that land held by an irrevocable trust will be attributed to the trust's beneficiaries, provided that the trust agreement is in writing, and the beneficiaries and their interests are identified. Otherwise, the land will be attributed to the trustee.

Paragraph (b)(2) describes attribution of land held in a revocable trust that provides for reversion of the trust land to the grantor upon revocation. Land held by such trusts are attributed to the grantor(s) of the trust in proportion to the grantor's contribution to the trust. Such attribution assumes the trust agreement is in writing and the following have been identified in the trust document: the beneficiaries and their interests; the grantor(s) of all land held by the trust; the conditions under which the trust may be revoked or terminated; and the identity of the recipients of the trust land upon revocation or termination. If any of these requirements are not met, the land will be ineligible to receive irrigation water, unless the land has already been attributed to the grantor(s) on the RRA forms.

Paragraph (b)(3) describes attribution of land held in revocable trusts other than those covered under paragraph (b)(2). If the otherwise revocable trust does not specify its grantors, the conditions under which it may be revoked, or to whom the land will revert upon revocation, the land held in trust will be ineligible to receive irrigation water until these issues are resolved. If the otherwise revocable trust includes all of the criteria listed in the preceding sentence, the land held in trust will be attributed to the beneficiaries. The only exception is if the otherwise revocable trust is not in writing or does not identify the beneficiaries or the beneficiaries' interests. Under such circumstances, the land will be attributed to the trustee.

Paragraph (c) was included in the final rules to address the concept of a ''class'' of beneficiaries. If the trust document is specific as to the beneficial interest to which each member of the class will be entitled and the members of the class are identifiable, then attribution will be made to members of the class who are natural persons or established legal entities.

Paragraph (d) describes how full-cost rates will be assessed to certain grantor revocable trusts.

The following examples illustrate the application of § 426.7:

Example (1). Bank X is the trustee for five irrevocable trusts, each of which has more than one beneficiary. The irrevocable trusts contain 1,280, 960, 640, 800, and 400 acres, respectively, and all meet the criteria set forth in § 426.7(b)(1). All trust beneficiaries are qualified recipients, and none has any landholdings outside of the trusts. Since all the trusts' land is attributable to the trust beneficiaries, and Reclamation determines all the beneficiaries are within their ownership and nonfull-cost entitlements, all 4,080 acres in the five irrevocable trusts are eligible to receive irrigation water.

Example (2). Farmer A, a qualified recipient, provides in his will for the establishment of a trust and the conveyance of 640 acres of his land receiving irrigation water into that trust for his daughter upon his death. The trust meets the criteria set forth in § 426.7(b)(1). The land is located in a district which has amended its contract to conform to the discretionary provisions. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer A dies, and the testamentary trust he has established is activated. The trust's land is attributable to the daughter as the sole trust beneficiary. Therefore, the trust's land is eligible to receive irrigation water at the nonfull-cost rate, assuming the daughter has not exceeded her acreage limitation entitlements.

Example (3). Farmer B, a qualified recipient, owns 960 acres eligible to receive irrigation water in a district subject to the discretionary provisions. He decides to place 160 acres of his land in an irrevocable trust with his daughter as the beneficiary. The trust agreement satisfies the criteria of § 426.7(b)(1). The 160 acres of trust land will be attributed to the daughter's entitlement if she is independent. If she is dependent, the 160 acres of trust land will be attributed to Farmer B as her parent or to the person who is acting as her guardian.

Example (4). ABC Corporation, a prior law recipient, establishes a grantor revocable trust and places 160 acres of land receiving irrigation water in the trust for the benefit of J. Jones. The trust agreement satisfies all criteria of § 426.7(b)(2). Under the terms of the revocable trust, the trust will terminate and title to the 160 acres will revert back to ABC Corporation in 10 years. All 160 acres of the land in trust are attributed both to the corporation and to the corporation's stockholders in proportion to the stockholders' percent of stock held in the corporation.

Example (5). Assume the same facts as in Example 4 above, except that Charity X, a legal entity fully independent of ABC Corporation, will receive the land held in trust upon termination. In this example, the trust is an ''otherwise revocable trust'' rather than a ''grantor revocable trust.'' The 160 acres are attributed to the beneficiary of the trust, J. Jones.

Example (6). Farmer C, a qualified recipient, places 960 acres of land receiving irrigation water in a trust for his son. The trust agreement satisfies all criteria of § 426.7(b)(2). It provides that the trust shall expire in 20 years, and ownership of the trust land shall be vested in Corporation Y, of which Farmer C is a part owner with 5 percent interest. Because title to 5 percent of the trust land will revert indirectly to Farmer C upon termination of the trust, 48 acres (960 times 5 percent) of the trust land are attributed to Farmer C. The remaining 912 acres of trust land is attributable to the beneficiary of the trust. If Farmer C's interest in Corporation Y changes during the term of the trust, the amount of trust land attributed to Farmer C will change accordingly.

Comments Concerning § 426.7—Trusts

General

Comment: Trusts should be treated as a legal entity subject to the limits of the RRA.

Response: Reclamation has not accommodated this comment in the final regulations at this time. Section 214 of the RRA expressly addresses trusts and exempts from the ownership and nonfull-cost pricing limitations of the Federal reclamation law lands held by certain trustees acting in a fiduciary capacity. Reclamation intends to address this issue, along with related Trust issues in a separate rulemaking. In this section of the Federal Register, Reclamation has published an advance notice of proposed rulemaking which solicits comments on how to address problems associated with certain trusts.

Comment: The draft regulations do not provide guidelines to determine whether a minor child is actually independent. To allow income from a trust to be used as the basis for determining if a child is independent eviscerates RRA Section 202(4)'s definition of individual as a family unit. Reclamation should adopt mechanisms that determine whether a minor child is actually independent, including affidavits as to each minor's independent status, the minor's status during previous tax years, and copies of tax returns.

Response: The definition of the term ''dependent'' is based on the Internal Revenue Code of 1954 (see § 426.2), and the interpretation of this term by the Internal Revenue Service will govern Reclamation's application. Reclamation does require the submittal of tax returns to prove the independent status of minor children.

Comment: Class gifts should be allowed to be beneficiaries.

Response: This comment has been accommodated. A new § 426.7(c) has been inserted in the rules that provides for such attribution under certain circumstances.

Section 426.7(a)

Comment: The definition of an irrevocable trust as non-revocable is circular and useless.

Response: Reclamation has examined the definition of irrevocable trust and revised it to remove the term ''nonrevocable'' and to specify that an irrevocable trust is a trust that does not allow any individual, including the grantor or beneficiaries, the discretion to decide when or under what conditions the trust terminates. For the purposes of the acreage limitation provisions, land held in irrevocable trusts cannot revert to the grantor.

Comment: The definition of ''otherwise revocable trust'' has the land reverting directly or indirectly to someone other than the grantor. Since that person or persons never owned the land it cannot revert to them, rather the land is transferred to them upon termination.

Response: Reclamation has revised the definition to accommodate this comment.

Section 426.7(b)

Comment: Trusts should not have to be submitted to Reclamation for review and approval.

Response: As under the prior rules, trusts do not have to be submitted to Reclamation for review, unless the land held in the trust will be receiving irrigation water. The approval of trusts by Reclamation is limited to ensuring that the RRA trust criteria have been met. Reclamation is not interested in any other legal aspects associated with trusts. The information included in a trust is protected by the Privacy Act of 1974.

Comment: The prior regulations do not attribute property held by a trust to the trustee. The new regulations should not do so either.

Response: The commenters are correct in their reading of the prior regulations, in that the prior regulations did not address attribution of land held by a trust that does not meet Reclamation's trust criteria. However, Reclamation policy has been to attribute land to the trustee, the nominal holder of title, if the trust does not meet the established criteria. If a trust does not exist for Reclamation purposes, then the trustee is not covered by RRA Section 214. Thus, the land held by the trust is counted against the trustee's acreage limitation entitlements.

Comment: Any attempt by Reclamation to attribute land to the trustee will impose the trustee's limitation on acreage and pricing on the beneficiaries for whom the trustee is the fiduciary. This will deprive the beneficiaries of their personal entitlement to nonfull-cost project water and pricing. This is contrary to the common law of trusts.

Response: The treatment of lands held in trust is dictated by Section 214 of the RRA, not by the common law of trusts. Section 214 established criteria for treatment of certain kinds of trusts. Trusts that do not meet those requirements must be treated as required by the RRA. Accordingly, the nominal owner of the land is attributed the entire landholding for acreage limitation purposes.

Comment: If the trustee serves as the operator or farm manager of trust property, the acreage limitations should be applied to the trustee.

Response: The RRA does not impose acreage limitations on farm operations or management arrangements, unless they constitute leases. If a trustee was found to have leased the land held in trust from the trust, then the acreage limitation would apply to that landholder just as they would apply to any other lessee.

Comment: Does the use of a formula for identifying beneficiaries' interests, rather than identifying a specific beneficial interest in acreage, meet the requirement that beneficiaries' interests be identified?

Response: For trusts where attribution is to the beneficiaries, if the trust document uses a formula for identifying beneficial interests, Reclamation will also use that formula to attribute acreage, so long as at any point in time the percentage of beneficial interest attributable to any specific beneficiary can be readily determined.

Comment: In practice, trusts are provisionally approved when submitted to Reclamation. If Reclamation

discovers minor discrepancies the grantors or trustees are provided a reasonable opportunity to amend or restate the trust. This existing practice should be reflected in § 426.7.

Response: Although these practices were not placed within the rule, Reclamation intends to continue them.

Section 426.8 Nonresident Aliens and Foreign Entities

Section 426.8 of the prior regulations, *Operation and maintenance (O&M) charges*, is renamed *Recovery of operation and maintenance (O&M) charges* and renumbered as § 426.23. Section 426.8, *Nonresident aliens and foreign entities*, is a new section that was not included in the proposed regulations. This section describes the acreage limitation entitlements of nonresident aliens and entities not established under State or Federal law.

Paragraph (a) defines *domestic entity* and *foreign entity*, since those terms are used in this section.

Paragraph (b) states that nonresident aliens and foreign entities may not receive irrigation water on land held directly in discretionary districts. It also states that such landholders may hold eligible land directly in prior law districts, if the landholders have not already elected to conform to the discretionary provisions.

Paragraph (c) provides the general entitlement for nonresident aliens and foreign entities, namely, the prior law entitlements. Paragraph (d) provides to the prior law entitlement applicable to certain nonresident aliens and foreign entities. If the nonresident alien is a citizen of, or the entity has been established in a country that has treaty or other international agreements with the United States Government that provide for treatment of foreign citizens or entities like United States citizens or domestic entities, then they will be treated as a United States citizen or a domestic entity with regard to the acreage limitations. Proof of citizenship or the establishment of the entity will be required.

Paragraphs (d)(3)(i) through (iv) specify how nonresident aliens and foreign entities from countries with such agreements with the United States can become subject to the discretionary provisions and when irrevocable elections submitted by nonresident aliens and foreign entities will not be approved.

The following examples illustrate the application of § 426.8:

Example (1). Farmer F is a citizen and resident of Switzerland. Farmer F directly owns 160 acres of irrigation land in District X, a district subject to prior law. Subsequently, District X amends its contract to conform to the discretionary provisions. Farmer F, as a nonresident alien, cannot meet the requirements of either a qualified recipient or limited recipient. For that reason, and because he owned the irrigation land prior to the district's contract amendment, Farmer F may, as set forth in § 426.12(e), place the land under recordable contract and receive irrigation water at the nonfull-cost rate for 5 years. (If the land were not placed under recordable contract or had Farmer F not acquired the irrigation land prior to the district's contract amendment, the 160 acres owned would be ineligible for service until such time as it was sold or otherwise transferred to an eligible recipient or Farmer F qualifies as a resident alien in the United States.)

Example (2). Six siblings who are citizens and residents of Canada form a family corporation registered in the State of Montana with each sibling holding equal shares in the corporation. The corporation makes an irrevocable election and is therefore a qualified recipient entitled to receive irrigation water on 960 acres or less of owned land. The brothers cannot meet the requirements to be qualified recipients since none are citizens of the United States or residents aliens thereof. However, since Canada has certain treaty commitments with the United States and the six siblings hold the land indirectly, the six siblings will be treated as United States citizens for purposes of applying the acreage limitation provisions. Therefore, each sibling may make an irrevocable election and indirectly own up to 800 additional acres through other entities that would be eligible to receive irrigation water. In a district subject to the discretionary provisions, nonresident aliens may receive irrigation water only on lands held through legal entities (i.e., indirectly) and may not receive irrigation water on land they hold directly.

Example (3). CDE Development Company is a corporation, incorporated in the Greater Antilles, with more than 25 shareholders. CDE Development Company buys 160 acres in a district which has amended its contract to conform to the discretionary provisions. However, unless and until such time as CDE Development Company establishes itself as a legal entity under State or Federal law, it cannot meet the requirements to become a limited recipient, and none of its land held directly in discretionary districts is eligible to receive irrigation water.

Example (4). FGH Corporation is owned by more than 25 stockholders and was established in Mexico. IJK Corporation is registered in California and is a wholly-owned subsidiary of FGH Corporation. IJK owns 640 acres in a district subject to the discretionary provisions. IJK is a limited recipient that would normally be eligible to receive irrigation water on 640 acres. Since Mexico has a treaty with the United States whose terms require treatment of its citizens like United States citizens, and FGH Corporation holds the land indirectly, FGH Corporation will be treated as a legal entity established under State or Federal law for purposes of applying the acreage limitation provisions. Therefore, FGH may make an irrevocable election to become a limited recipient with an ownership entitlement of 640 acres. If FGH does not make an irrevocable election, FGH will only have the 160-acre ownership entitlement of a prior law recipient corporation and only 160 acres of IJK's owned land would be eligible to receive irrigation water; the remaining 480 acres would have to be declared excess.

Comments Concerning § 426.8—Nonresident Aliens and Foreign Entities

Comment: Entitlements for nonresident aliens should be in its own section.

Response: Reclamation has adopted this suggestion.

Comment: Since the settlement contract did not include a review of the nonresident alien provisions, the current regulations do not need to be changed.

Response: Reclamation is not restricted by the settlement contract as to what provisions may be revised. The prior regulations did not address foreign entities entitlements and the lack of clarity has led to confusion. Some interpretations could place foreign entities in a better position than United States citizens or entities established under State or Federal law. That would not be consistent with United States policy.

Comment: Some commenters suggested that the congressional intent was to provide nonresident aliens with no federally subsidized water on land held directly or indirectly. Another commenter supported the application of prior law entitlements to nonresident aliens and foreign entities as provided in the proposed rules.

Response: Under prior law, there is no distinction between nonresident aliens, foreign entities, United States citizens, resident aliens, or domestic entities. Accordingly, a nonresident alien or foreign entity may hold land as a prior law recipient and receive irrigation water. The United States Government treats citizens and entities from other countries that have certain treaties or other international agreements with the United States in the same manner as United States citizens or domestic entities. Reclamation has incorporated both of these concepts in the final regulations.

Comment: Many commenters suggested foreign ownership is not restricted in the RRA and there is no statutory authority for placing a restriction on the amount of land a nonresident alien or foreign entity can own through a domestic legal entity.

Response: The RRA strictly addresses the amount of land that may receive irrigation water and what rate must be paid for such deliveries. While the RRA

does not address land ownership itself, it does not provide for land directly held by nonresident aliens or entities not established under State or Federal law in a discretionary district is ineligible to receive irrigation water. This is because nonresident aliens and entities not established under State or Federal law are not included in the definitions of qualified and limited recipients. If no limitation was placed on the amount of land nonresident aliens or foreign entities could hold and receive irrigation water, United States citizens, resident aliens, and domestic entities would be placed at a disadvantage in their own country. Reclamation simply does not believe that is the intent of the RRA.

One of the goals of Reclamation's reexamination of the ability of nonresident aliens and foreign entities to receive water in discretionary districts is to treat all recipients in the same manner, unless prohibited by statute. Section 426.8 accomplishes that goal.

Comment: Congress expressly repealed the 160-acre limitation.

Response: This statement is not supported by the statute. Section 203(b) provides that districts and, thus, landholders who do not conform to the discretionary provisions remain subject to reclamation law in effect prior to the enactment of the RRA. The prior law entitlements remain available.

Comment: One commenter suggested that because Congress used the term ''natural persons'' instead of ''individuals'' in the definition of qualified and limited recipients, their intent was not to discriminate against nonresident aliens.

Response: Reclamation disagrees with this interpretation.. Reclamation believes the Congress used the term ''natural persons'' to clarify which parties should be counted in determining if an entity is a qualified or limited recipient.

Comment: An alternative resolution may be to limit the ownership entitlement of foreign corporations that hold land indirectly to that allowed under prior law, because foreign corporations do not meet the definition of ''natural persons'' who may have an ownership interest in a qualified or limited recipient.

Response: Essentially, this is how the proposed regulations addressed foreign entities with respect to acreage limitation status. The final regulations include recognition of the requirement that the United States treat citizens of nations that have certain treaties and other international agreements with the United States like United States citizens.

Comment: Changing the treatment of nonresident aliens is unnecessary, violates the RRA, and discriminates against non-U.S. citizens in violation of the North American Free Trade Agreement (NAFTA) and the Canada-U.S. Free Trade Agreement (CUSFTA).

Response: The RRA does not provide for eligibility of any land held directly in a discretionary district by a nonresident alien or foreign entity. In addition, the RRA does not allow nonresident aliens or foreign entities to become qualified or limited recipients under any circumstance.

However, in recognition of United States treaties and other international agreements, Reclamation has made provisions for nations that have certain treaties and other international agreements with the United States. Specifically, citizens of such nations or entities established in such nations will be treated as U.S. citizens or domestic entities in discretionary districts for indirectly held land.

Comment: Congress rejected a bill in 1990 that would have prevented the delivery of Reclamation water to U.S. corporations with foreign shareholders (passed House, not voted on in the Senate). In 1991, a similar bill was introduced. The Commissioner of Reclamation objected to the provision pertaining to the RRA. The House passed the bill, the Senate passed another version, and the bill itself never came out of conference committee.

Response: The interpretation of the RRA adopted by this rulemaking is consistent with the congressional directives set forth in the RRA and the United States' international obligations.

Comment: A 1984 Solicitor's opinion states that corporations with foreign ownership may elect to conform to the discretionary provisions.

Response: The regulations do not contradict that opinion. The Solicitor's opinion and the regulations require that the electing entity is a domestic entity if it directly holds land.

Comment: Some commenters suggested that Reclamation should look-through to the ultimate owner of the U.S. entity and ignore the intermediate entities, if any, or simply ignore foreign part owners.

Response: The RRA does not provide exceptions for intermediate entities or any part owners of entities. Reclamation looks at intermediate entities and part owners to ensure that they do not exceed their acreage limitation entitlements.

Comment: At the very least, the new restrictions should only be applied prospectively to corporations that have existing water rights that would be curtailed.

Response: Since the final regulations include an exception recognizing certain treaties and other international agreements, Reclamation believes that many of the foreign entities and nonresident aliens who hold land will not be adversely affected by this provision. For those few that may be affected, they are given a 5-year grace period to address the situation, provided the land was purchased before December 18, 1996 [see § 426.12(e)(4)]. The grace period will not begin prior to the effective date of these rules. During and after the grace period expires, the sale price of land that becomes excess because of this rulemaking will not be restricted.

Comment: Five years is simply too short a period of time in which to divest landholdings that have been accumulated since the enactment of the RRA in reliance on the RRA and the current regulations. At a minimum, these persons should be allowed 10 years to make plans to divest themselves of their excess landholdings.

Response: This comment has not been accommodated in the final regulations. The recordable contract provision, including the 5-year limitation, has been historically used to address instances where changes to the rules or district actions to conform to the discretionary provisions results in land becoming ineligible. Reclamation has encountered few situations where the 5-year limitation has caused problems. Reclamation believes it is fair to treat nonresident aliens and foreign entities in the same manner it has historically treated United States citizens, resident aliens, and domestic entities.

Comment: The 5-year grace period and provision to sell the land at fair market value does not address the situation where the nonresident alien does not control the domestic legal entity. In many situations the nonresident alien or foreign entity may not be able to ensure the sale of lands.

Response: Such land will be treated in the same manner as any other land that becomes ineligible as a result of these regulations. As with any legal entity, if a part owner's acreage limitation status or holdings outside the entity results in the part owner exceeding an entitlement because of attribution of the entity's land, then the entity may not be able to realize its full entitlement. Reclamation believes it is fair to treat part ownership by a nonresident alien or foreign entity in the same manner as all other part owners.

Comment: A commenter requested that special consideration be provided to nonresident aliens who hold land in the Central Arizona Project on this issue. Specifically, the commenter suggested that if a nonresident alien's entitlement is reduced, then in the Central Arizona Project the nonresident alien whose land becomes ineligible should be eligible for a 10-year recordable contract. The commenter proposed this special treatment because a possible consequence of the proposed rules may be the drilling of new wells and acceleration of the depletion of the underground water reserves.

Response: Section 218 of the RRA provides for recordable contracts, ''* * * for a period of time not to exceed 10 years from the date such lands are capable of being served with irrigation water, as determined by the Secretary.'' Accordingly, land held by nonresident aliens that becomes ineligible because of the changes to the entitlement for nonresident aliens or foreign entities will be eligible to enter into recordable contracts as provided for in § 426.12(e)(4) for 5 years or the difference between 10 years and the number of years irrigation water has been available to the land in question, whichever is greater.

Comment: What evidence is needed by a district to confirm that a corporation is owned by more than one foreign person?

Response: Under § 426.18, it is the responsibility of each landholder to complete the RRA forms completely and accurately. The district may reasonably rely on the information presented on the forms.

Comment: A number of additional specific examples were presented to Reclamation to be addressed. These are addressed as follows:

Example from comment: What is the entitlement of a domestic corporation which is wholly owned by a foreign corporation which in turn is wholly owned by a foreign family, e.g., mother, father, daughter, and son?

Response: In addressing this example three factors must be known: (1) What is the acreage limitation status of the domestic corporation? (2) Was the foreign entity established in a nation that meets the exceptions included in § 426.8(d)? (3) Are the family members citizens of a nation that meets the criteria included in § 426.8(d)? If the foreign corporation does not meet the criteria, then it would be a prior law recipient with acreage limitation entitlements of 160 acres. Whether or not this status affects the ability of the domestic entity to realize its full entitlement would depend on the domestic entity's acreage limitation status. If the foreign entity was established in a nation that met the criteria and it made an irrevocable election, then it would be a qualified recipient. Its ability to realize its full entitlement would depend on whether its part owners also met the criteria.

Example from comment: What is the entitlement of a domestic corporation that is wholly owned by a foreign corporation and the shares of the foreign corporation are publicly traded? Reclamation should address the fact that such shares are commonly ''bearer'' shares and are not registered to individuals or entities.

Response: Reclamation has addressed the issue of bearer shares in the past. If an entity cannot identify its part owners, as required on the RRA forms, the entity is ineligible to receive irrigation water.

Example from comment: What is the entitlement of a domestic corporation whose shares are publicly traded, some portion of which are held in ''street name?''

Response: This would be treated in the same manner as Reclamation treats any domestic corporation. For example, if that corporation is a limited recipient and is required to submit RRA forms, the entity is only required to disclose the names of persons whose acreage attributed through the corporation exceeds 40 acres. Generally, corporations are aware of such part owners. Districts are not required to take any special actions to determine if an entity is held by nonresident aliens or foreign entities.

Example from comment: What is the effect on a domestic corporation's ownership entitlement if a foreign shareholder becomes a U.S. resident?

Response: The domestic entity's entitlement is determined by its own acreage limitation status. However, its ability to receive irrigation water up to its full entitlement may be affected by part owners.

Section 426.9 Religious or Charitable Organizations

Section 426.9 of the prior regulations, *Class 1 equivalency*, is renumbered as § 426.11. The new § 426.9, *Religious or charitable organizations*, replaces § 426.15 of the prior regulations. This section describes the acreage limitation entitlements of these types of organizations. The few changes that have been made from the proposed rules are highlighted below.

Paragraph (a) includes a new definition for purposes of this section of *central organization*, in addition to the definition of *religious or charitable organizations* found in the proposed rule.

As in the proposed rule, the titles of paragraphs (b) and (c) have been modified in the final rule to reflect their application to both the ownership and nonfull-cost entitlements of religious or charitable organizations. This change eliminates the need for paragraph (d) that addressed leasing in the prior regulation.

Both the proposed and final versions of paragraph (b) include a more significant modification that changes the consequences of failure by a subdivision of a religious or charitable organization to satisfy the three criteria established by the RRA. Under the prior rules, the entire religious or charitable organization would be treated as a single limited recipient for purposes of application of the acreage limitation provisions, if one of its subdivisions failed to meet one of the established criteria. Under the proposed and final rules, only the subdivision that does not meet one or more of the criteria and any subdivisions of it are affected; the central organization and other subdivisions are unaffected.

The new language also establishes that the qualified or limited recipient status of a subdivision which fails to meet the three criteria is determined by counting the subdivision's members. Thus, most, but not all, subdivisions that fail to meet the criteria will be treated as limited recipients.

Paragraph (c) addresses the acreage limitation status of religious or charitable organizations that remain under prior law.

Paragraph (d) on affiliated farm management replaces paragraph (c) in the previous regulation.

The following examples illustrate the application of § 426.9:

Example (1). A charitable organization has subdivisions in each of five different districts. Each of these districts amends its contract to conform to the discretionary provisions. Therefore, each subdivision is entitled to own and farm 960 acres of irrigation land as long as they meet the criteria specified in § 426.9(b)(1).

Example (2). A religious organization has subdivisions in each of Districts A, B, C, and D. Each subdivision operates 800 acres of irrigation land. Districts A and B amend their respective contracts to conform to the discretionary provisions; therefore, the subdivisions in Districts A and B are each entitled to own or operate 960 acres of irrigation land as long as they meet the criteria specified in § 426.9(b)(1). Districts C and D do not amend their contracts to conform to the discretionary provisions and remain subject to the acreage restrictions specified under prior law. The subdivisions in Districts C and D, however, make individual elections to conform to the

discretionary provisions and are therefore entitled to own or operate 960 acres of irrigation land as long as they too meet the criteria specified in § 426.9(b)(1).

Example (3). Subdivision Z of the ABC Charity leases out the land it holds in a discretionary provision district. Accordingly, Subdivision Z and any subdivision of it will be treated as a single entity for acreage limitation purposes. Whether Subdivision Z is a qualified recipient or a limited recipient will be determined by the total number of members of Subdivision Z and its subdivisions. The acreage limitation status of ABC Charity and any other subdivisions of that central organization will not be affected because of the actions taken by Subdivision Z.

Comments Concerning § 426.9—Religious or Charitable Organizations

General

Comment: The proposed changes to provisions applying to religious or charitable organizations are an improvement over the current regulations.

Response: Reclamation believes the changes in the proposed rules, all of which were retained in the final regulations, will resolve many questions associated with this topic.

Comment: Religious and charitable organizations should be charged full-cost if they lease their land to another party.

Response: Land held by such organizations will be subject to application of the full-cost rate if they or their lessees exceed their entitlements, just like any other landholder.

Section 426.9(c)

Comment: Under this section would a local unit be allowed to become a limited recipient with respect to particular tracts of land that it must lease if the lessee will use the property in ways that are not within the exemption provided for in § 426.8(b)(1) and the central organization remains subject to prior law?

(Note: The referenced section is 426.9(b)(1) in the final rules.)

Response: A local unit may make an election to conform to the discretionary provisions and not affect the prior law status of the central organization. If the local unit then became a limited recipient for any reason, the associated entitlements would apply to the entire landholding of that unit and any of its subdivisions, not just to a particular tract of land.

Section 426.10 Public Entities

Section 426.10 in the prior regulations, *Information requirements*, is replaced by §§ 426.18, *Landholder information requirements*, 426.19, *District responsibilities*, and 426.25 *Reclamation audits*. The new § 426.10, *Public entities*, replaces § 426.17 of the prior regulations. This section describes the application of acreage limitation provisions to public entities and has been rewritten for clarity and organization. No substantive change is intended.

Paragraph (a) in the proposed rule has been deleted because the definition of the term *Public Entities* was a duplication of what is included in the definitions section (§ 426.2). What follows reflects the numbering of the final regulation.

Paragraph (a) has been rewritten to show that public entities are exempt from certain acreage limitation provisions rather than the land. The rephrasing more accurately states Reclamation policy. In particular, the land can become subject to ownership limitations through leasing. It also clarifies that public entities must meet certain RRA forms requirements.

Paragraph (b) states that public entities are not subject to excess land provisions in that land may be sold without price approval.

The wording of paragraph (c) is changed to state that land leased from a public entity will count toward the lessee's ownership entitlement, rather than being worded as a prohibition of leasing in excess of ownership entitlements.

The following examples illustrate the application of § 426.10:

Example (1). Farmer X is a qualified recipient who owns and irrigates 160 acres of land with irrigation water. The State of Colorado may lease Farmer X an additional 800 acres of State-owned land which will make up the balance of Farmer X's ownership entitlement. Farmer X is still entitled, however, to lease additional acreage which may be irrigated at the full-cost rate provided that additional acreage is not owned by a public entity.

Example (2). In 1976, Farmer X purchased 100 acres of irrigation land in District A and 100 acres in District B. Districts A and B remain subject to prior law and Farmer X has not made an irrevocable election. Since Farmer X purchased the land prior to December 6, 1979, all 200 acres are eligible to receive irrigation water. In addition, Farmer X wants to lease 60 acres of irrigation land from the State of Wyoming. If he does so, the leased land will be ineligible to receive irrigation water because Farmer X already owns in excess of the 160-acre ownership entitlement for prior law recipients. However, if Farmer X becomes a qualified recipient through either a contract amendment by a district in which he is a direct landholder or an irrevocable election, he will be entitled to receive irrigation water on not only the 60 acres he wishes to lease from the State, but also on another 700 acres of irrigation land, whether in his ownership or leased from another party, including a public entity.

Comments Concerning § 426.10—Public Entities

Section 426.10(a)

Comment: The use of the term ''acreage limitation'' in this section rather than ''acreage limitation and full-cost pricing'' will apply the nonfull-cost entitlement to public entities.

Response: The definitions of ''acreage limitation provisions'' and ''acreage limitation entitlement'' includes both the ownership and pricing restrictions of Federal reclamation law. Reclamation calls the attention of the commenter to the definitions section (§ 426.2).

Section 426.11 Class 1 Equivalency

Section 426.11 in the prior regulations, *Excess land*, is renumbered as § 426.12. The new § 426.11, *Class 1 equivalency*, replaces § 426.9 of the prior regulations. This section presents the concept of Class 1 equivalency, its relationship to land classification, and how it is used with regard to acreage limitation entitlements. Substantial editorial and organizational changes are made throughout this section but these are not intended to have substantive effect.

The proposed rule included a provision to prohibit the application of Class 1 equivalency in cases where irrigation of land contributes to hazardous or toxic return flows. The final rule does not include this provision and retains the provisions of the prior rule. The rest of this section includes no significant changes from the proposed and prior rule, unless otherwise noted below.

Paragraph (a) provides the general application of the Class 1 equivalency provision. Two changes were made to this paragraph from the proposed regulation. The first is in paragraph (a)(3) where the reference to Class 4 land has been removed. Since paragraph (a)(2) states that all land, including Class 4 and special use land, will be classified as 1, 2, or 3 for equivalency purposes, the rule was confusing without the change. Paragraph (e)(4) that addresses scheduling by Reclamation of requests for Class 1 equivalency determinations was moved to (a)(5).

The wording of paragraph (b) is changed to make clear that only districts, and not individual landholders, can make requests to Reclamation for Class 1 equivalency determinations. Individual landholders

must work through their districts to obtain Class 1 equivalency.

Paragraph (c) provides the definition of Class 1 land, while paragraph (d) explains how land classes are determined. Paragraph (e) addresses what additional studies are required for Class 1 equivalency determinations.

Paragraph (f) addresses how Class 1 equivalency determinations are used with respect to the acreage limitation provisions. Finally, paragraph (g) makes it clear that equivalency determinations that were a provision of project authorization will be honored as originally calculated.

The following examples illustrate the application of § 426.11:

Example (1). Farmer X owns a total of 1,300 acres in District A. That acreage includes 800 acres of Class 1 land, 300 acres of Class 2 land, and 200 acres of Class 3 land. The equivalency factors for the district have been determined to be: Class 1 equals 1.0, Class 2 equals 1.20, and Class 3 equals 1.50. Using these equivalency factors, the following landholding in terms of Class 1 equivalency would apply:

- Class 1: 800 acres divided by 1.0 equals 800 acres Class 1 equivalent.
- Class 2: 300 acres divided by 1.2 equals 250 acres Class 1 equivalent.
- Class 3: 200 acres divided by 1.5 equals 133 acres Class 1 equivalent.

Thus, Farmer X's total landownership of 1,300 acres is equal to 1,183 acres of Class 1 land in terms of productive capacity. It will be necessary for him to declare the equivalent of 223 acres of Class 1 land (1,183 acres minus 960 acres), as excess and ineligible to receive irrigation water while in his landholding. This can be accomplished in any combination of Class 1, 2, and 3 land that achieves the necessary result.

Example (2). A district with an existing contract decides not to amend its contract to conform to the discretionary provisions. However, an individual landholder within the district makes an irrevocable election to conform to these provisions. The landholder requests equivalency through the district, and the district requests Reclamation to make the equivalency determination for the entire district. Under such conditions, the district would be required to pay the United States for the cost of making the equivalency determination. Any arrangement regarding the payment of the costs between the landholder and the district would be a district matter. The application of Class 1 equivalency would be available only to landholders who have exercised an irrevocable election.

Example (3). A district decides to amend its contract to conform to the discretionary provisions, but it elects not to request equivalency. Thus, individual landholders within the district are not entitled to Class 1 equivalency.

Example (4). Landholder X is a qualified recipient who owns no land, but leases 1,100 acres in a district which has requested Class 1 equivalency. The land leased is a mix of Class 1, 2, and 3 land. During the time the equivalency determination was being made, Landholder X would be required to pay the full-cost water rate on 140 acres (1,100 acres leased minus her 960-acre nonfull-cost entitlement) if she continued to receive irrigation water on that land. Once the equivalency determinations had been completed, Landholder X would be entitled to lease the equivalent of 960 acres of Class 1 land at the nonfull-cost rate (something greater than 960 acres). Reclamation will reimburse the district for certain full-cost payments made for land which became nonfull-cost as a result of the equivalency determination and the district will reimburse Landholder X.

Example (5). Corporation Y is a limited recipient that owns 600 acres of irrigation land and leases another 160 acres in District A. District A has requested and received a Class 1 equivalency determination. However, Corporation Y was not receiving irrigation water on or before October 1, 1981. Thus, even with equivalency, Corporation Y would be required to pay the full-cost rate for all land served in its landholding. (If Corporation Y had been receiving irrigation water on or before October 1, 1981, it would have been entitled to receive irrigation water on the equivalent of 320 acres of Class 1 land at the nonfull-cost rate. Deliveries on the remaining 440 acres or less, depending on application of Class 1 equivalency, would be at the full-cost rate.)

Example (6). Farmer Jones is a qualified recipient and owns 320 acres in each of three districts. One of those districts, District A, requests and receives a Class 1 equivalency determination. From the equivalency determination, Farmer Jones is shown to own the equivalent of 240 acres of Class 1 land in District A. Farmer Jones is therefore entitled to purchase and receive irrigation water on an additional 80 acres of irrigation land (or the Class 1 equivalent thereof in District A) in any district. He could also lease 80 acres (Class 1 equivalent thereof in District A) in any district and receive irrigation water on that land at the nonfull-cost rate.

Example (7). Landholder Y owns 1,200 acres in District A and 160 acres in District B. Landholder Y is a qualified recipient and has designated 800 acres in District A as nonexcess and 400 acres in District A as excess. She has placed the 400 acres of excess land under recordable contract so that it can be irrigated while still in her ownership. Subsequent to this nonexcess land designation, District A requests and receives a Class 1 equivalency determination. Landholder Y is then free to withdraw excess land from recordable contract and redesignate it as nonexcess to take advantage of District A's equivalency determination, as provided in §§ 426.12(b) and (j)(5), if an appraisal of the excess land has not already been performed. The maturity date as determined in the original recordable contract, however, would not change.

Comments Concerning § 426.11—Class 1 Equivalency

General

Comment: Assurances should be in the rule or preamble that existing equivalency rights should not be impaired where Reclamation has not completed and is not operating required water and drainage service.

Response: The final rule does not address this issue. Existing equivalency determinations will not be changed without the district's request. Once requested, Reclamation will examine any incomplete facilities, although no general exemption will be provided.

Comment: The rules should address the incidental irrigation of Class 6 land.

Response: Reclamation considered addressing this issue in a July 1994 policy in a manner that would have allowed such land to permanently receive irrigation water for acreage limitation purposes. However, the policy was withdrawn in September 1994.

Section 426.11(a)

Comment: Class 1 equivalency should be applied on a westwide basis.

Response: The RRA provides for Class 1 equivalency on a district-wide basis. As an administrative matter, where the agricultural setting with respect to land quality, climate and other productive factors is similar, nearby districts can be combined into one equivalency study. However, there is too much variation in conditions to apply equivalency on a westwide basis.

Comment: Class 4 land should be considered as Class 3 land rather than making a determination on a case-by-case basis.

Response: Class 4 lands typically include special characteristics. These lands are not necessarily Class 3 lands when those characteristics are not considered, but may have the productive potential of Class 1 or 2 lands.

Section 426.11(d)

Comment: Reclamation has no authority to reclassify lands.

Response: While it is true that Reclamation may not reclassify land for equivalency purposes without the district's request, Reclamation has authority under the Reclamation Act of 1939 and other statutes to reclassify lands.

Comment: Contract amendments or renewals should not automatically trigger reclassification.

Response: No provision in these regulations requires automatic reclassification because of a contract amendment or renewal.

Comment: Proposed § 426.10(d)(1)(i) goes beyond what the Congress provided. If nothing else it should not be used to remove Class 1 equivalency already provided.

Response: RRA Section 207 requires that soil characteristics be taken into account when determining Class 1 equivalency factors. Reclamation has always considered soil characteristics when classifying or reclassifying land.

Comment: The government should pay for reclassifications.

Response: For projects authorized after 1924, Reclamation pays for the initial classification. Reclassifications are only done upon request and the benefits of that action will accrue to identifiable landholders and districts. In some instances, contracts between districts and Reclamation may provide for cost sharing with Reclamation.

Section 426.11(g) (of the Proposed Rule)

Comment: Several commenters wanted Reclamation to explain under which provision of the RRA it claims authority to deny equivalency for lands which have the potential to contribute to hazardous or toxic return flows. The commenters believed that the proposal is purely punitive. Since it would result in some landholdings that will be economically less productive than if they had equivalency, the farmer may not be able to bear the costs of managing return flows and compete with farmers on Class 1 soils.

Response: While Reclamation has authority under the RRA to consider toxic return flows, a provision has not been included in the final rules to limit Class 1 equivalency as a result of toxic and hazardous return flows. Instead, Reclamation will address this problem through other measures, and take appropriate steps under other authority. The problem of toxic drainage is a serious one and the equivalency provisions do not provide a mechanism for addressing toxic drainage from already classified lands.

Comment: The hazardous/toxic study for Class 1 equivalency should only apply if State agencies are not already addressing that issue.

Response: The final rule does not include a provision limiting Class 1 equivalency as a result of a study of toxic and hazardous return flows. Reclamation will address this problem through other authorities.

Comment: Several commenters requested definitions for: (1) ''hazardous and toxic return flows;'' (2) ''contribute to;'' and (3) ''irrigation return flows.'' Others expressed their dislike of the use of the word ''could'' in reference to return flows and toxicity. Some thought it could be interpreted too broadly and noted that the preamble for the proposed rules states ''would'' and the rule should be changed to be the same. Others expressed support for substituting ''but for causation'' or ''substantial factor causation'' for the word ''contribute.'' Some commenters recommended that Reclamation should explain what criteria it proposes to use to evaluate whether the return flows from irrigated land are hazardous and toxic.

Response: The final rule does not include a provision limiting Class 1 equivalency as a result of toxic and hazardous return flows.

Comment: The analysis of hazardous or toxic irrigation return flows is an unfunded mandate.

Response: The final rule does not include a provision limiting Class 1 equivalency as a result of toxic and hazardous return flows. Accordingly, the question of whether the analysis of hazardous or toxic irrigation return flows is an unfunded mandate is no longer applicable.

Comment: Reclamation should make it clear that if a contractor requests that a portion of its land be classified or reclassified, Reclamation will not classify or reclassify any other land in the district, including reclassification of the entire district.

Response: When a district requests a Class 1 equivalency determination, Reclamation will examine all of the land in the district.

Comment: The proposed rules ignore the fact that most of the Class 1 equivalency arrangements have already been put into place. Therefore, instead of the prospective approach, the trace element analysis should also be initiated wherever equivalency is already in place.

Response: In fact, many districts have yet to request Class 1 equivalency determinations. Less than 7 percent of the districts subject to acreage limitation have Class 1 equivalency factors in place. However, relatively few districts request equivalency. Thus, in order to effectively address toxic and hazardous drainage, Reclamation will identify other approaches to solving this problem.

Comment: Section 426.11(g)(2) should be changed to read: ''Increased acreage entitlements as a result of Class 1 equivalency will not be permitted on land whose irrigation Reclamation finds to contribute to hazardous or toxic drainage irrigation return flows or where drainage or return flows degrade the waters of the United States or otherwise contribute to water pollution.''

Response: The final rule does not include a provision limiting Class 1 equivalency as a result of toxic and hazardous return flows. In the environmental commitments section of the final EIS, Reclamation recognizes that water quality impacts may be associated with toxic constituents in some irrigation return flows from project waters applied to district lands. Reclamation will review its internal policies and procedures, including those concerning land classification, and determine what approaches are available to assist in reduction of toxic constituents in irrigation return flows from agricultural lands receiving Reclamation water.

Section 426.12 Excess Land

Section 426.12 in the prior regulations, *Excess land appraisals,* is renumbered as § 426.13. The new § 426.12, *Excess land,* replaces § 426.11 of the prior regulations. This section has been rewritten for conciseness. It addresses the eligibility of land that exceeds landholders ownership entitlements.

The *In general* section found in the prior rules has been deleted because the first sentence contained a definition of *excess land* that is redundant with that found in the definitions section, § 426.2. Paragraphs (g) and (i) of the prior rules have been deleted. These paragraphs apply to only a very small number of landholders who have pre-1982 recordable contracts. Reclamation did not retain paragraphs in the final regulations that currently apply to only a few landholders and are likely to become completely obsolete in the next few years. Reclamation will continue to administer the program with respect to these landholder as it has under paragraphs (g) and (i) of the prior rules.

Paragraph (a) provides the process for designating excess and nonexcess land. Paragraph (b) discusses when and how designations of excess and nonexcess land can be changed. Paragraph (c) addresses issues such as whether land that becomes excess when a district first contracts with Reclamation may be placed under a recordable contract, must be sold at an approved price in order for it to become eligible, etc. It should be noted that the proposed rule did not consistently use the phrase ''sells or transfers'' throughout this and similar paragraphs. That has been corrected in this final version.

Paragraph (d) specifies what happens to land that is acquired into excess status after the district has contracted with Reclamation. Paragraph (d)(3) of the prior regulation has been merged with paragraph (d)(2) of these final regulations.

Paragraph (e) specifies what happens to land that has its status changed by operation of law or regulations. Included in the proposed and final

version of this paragraph is provision (e)(4) that addresses what happens to land held by nonresident aliens and foreign entities that becomes excess because of this rulemaking. The provision allows such land to be placed under recordable contract and sold or transferred without price approval regardless of whether the land is placed under recordable contract. The proposed rule stated that the indirectly owned land had to have been purchased by the nonresident alien or foreign entity before July 1, 1995, in order to take advantage of this provision. The final rule changes that date to December 18, 1996.

Paragraph (f) discusses how Reclamation will treat excess land that is acquired without price approval. The proposed rule included paragraph (f)(2) that was redundant with paragraph (d)(1)(i). Accordingly, the final rule does not include the paragraph and paragraph (f) has been reformatted.

The proposed and final rules add a new paragraph (g). This paragraph promotes the intent of the statute concerning the disposal of excess land by prohibiting sellers of excess land from receiving irrigation water if they lease back or reacquire that land either voluntarily or involuntarily. Land held under such lease back or reacquisition arrangements, however, will be permitted to receive irrigation water if the transaction transferring the land back to the seller of excess land takes place prior to December 18, 1996. This is a change from the proposed regulation that permitted the receipt of irrigation water on such land only if the transaction occurred prior to July 1, 1995. The final rule also modifies the proposed rule by including language that states the prohibition against receiving irrigation water on lease backs and reacquisition of land by the seller of the excess land is effective only until the deed covenant terminates, and that the prohibition is waived if the landholder pays the full-cost rate for the irrigation water delivered to the leased back or reacquired land that is otherwise eligible.

As in the proposed rule, the final regulation adds a new paragraph (h) which provides for assessment of the compensation rate (see § 426.2), and an administrative fee (see § 426.20) if ineligible excess land is irrigated in violation of Federal reclamation law and regulations. The assessment of the compensation rate when irrigation water is delivered to ineligible excess land has been Reclamation policy and was incorporated in the proposed and final rules for clarity.

Paragraph (i) of the proposed and final regulations, which corresponds to § 426.11(h) of the prior rules, adds a new paragraph to the deed covenant language. In general, the deed covenant governs the resale of lands that had been sold from excess status, unless specifically exempted. The new language provides that certain covenant terms, which permit removal of the covenant and eliminate the requirement for sale price approval, will not apply if the acquiring party is the party who originally sold the land from excess status. The final rules make an additional modification providing for an exception to this new language if the reacquiring party is a financial institution. It should be noted that the provisions of the deed covenant are triggered only when title to the land is to be transferred. Thus, the deed covenant applies only to direct landowners, and does not apply to the sale or purchase of an indirect interest in a legal entity that holds the land directly.

Paragraph (j) provides information on recordable contracts, such as: who may request a recordable contract; what clauses must be included; what water rates Reclamation will charge for land held under a recordable contract; etc. As in the proposed rules, paragraph (j)(4)(i) makes clear that land subject to a recordable contract can receive irrigation water at less than the O&M rate only if both the owner and the lessee are subject to prior law. The sentence from the prior rules [paragraph (e)], allowing recordable contract land to be selected as full-cost land, was deleted because that issue is addressed in § 426.6. Paragraph (j)(5) was amended in the final rules to clarify the language of the proposed rules that provides landholders must receive Reclamation's permission to amend recordable contracts, and if so approved, the length of time before the landholder must sell the remaining land held under recordable contract will not change. Moreover, any requirement for application of a deed covenant will no longer be applicable to land removed from the recordable contract.

The following examples illustrate the application of § 426.12:

Example (1). Landowner A owns 1,200 acres of irrigable land in District S. He purchased this land before the district entered its first repayment contract with the United States after October 12, 1982. Landowner A, as a qualified recipient, designates 960 of his 1,200 acres as nonexcess. With Reclamation approval, Landowner A may designate the 240 acres, which are now excess, as nonexcess and eligible to receive irrigation water, provided he redesignates 240 acres of presently nonexcess land as excess.

Example (2). Landowner B is a qualified recipient by virtue of District T's contract amendment to conform to the discretionary provisions. Landowner B purchased 1,400 acres of irrigable land in this district before the district entered a repayment contract to receive an irrigation water supply. After the district's contract amendment, Landowner B designates 960 acres of his land as nonexcess. Subsequent to this designation, the district requests and receives an equivalency determination. All 1,400 acres of Landowner B's land is Class 3 land, and in District T, 1 acre of Class 1 land is equal to 1.4 acres of Class 3 land. With equivalency, Landowner B may irrigate 1,344 acres of Class 3 land in District T. Thus, he may redesignate everything in his ownership as nonexcess except for 56 acres. In the future, if Landowner B sells some of this 1,344 acres of nonexcess land, he may not designate any of the 56 excess acres as nonexcess.

Example (3). Farmer C, who owns irrigable land in excess of his ownership entitlement, sells 960 acres of his excess land to Farmer D, a qualified recipient, at a Reclamation-approved price. Farmer D owns no other irrigable land and designates the 960 acres as nonexcess and eligible to receive irrigation water in his ownership. After the 10-year period of the deed covenant expires, Farmer D sells the 960 acres at fair market value and purchases another 960 acres of irrigable land located in yet another district. Farmer D purchases the latter parcel at a Reclamation-approved price because the land was excess in the seller's holding. However, since Farmer D has already reached his 960-acre limit for recapturing the fair market value of land purchased at a Reclamation-approved price, the newly purchased land is not eligible to receive irrigation water while in his holding. In order to regain eligibility, the land must be sold to an eligible buyer at a Reclamation-approved price. After Farmer D sells that land at a Reclamation-approved price, he may purchase and receive irrigation water on another 960 acres, provided it is bought from nonexcess status.

Example (4). Landowner E is a resident alien and owns 480 acres of irrigable land in District X, which is subject to prior law. Landowner E has designated 160 acres as nonexcess, and it is receiving irrigation water. Following this designation, District X amends its contract to conform to the discretionary provisions. As a result of the district amendment, Landowner E satisfies the requirements for a qualified recipient and may designate all 480 acres owned as nonexcess.

Example (5). Landowner G is a resident alien and owns 160 acres of irrigation land in District A. District A is subject to prior law. Landowner G purchases an additional 160 acres which had been designated nonexcess while in the landholding of the seller. Since Landowner G has purchased himself into excess status, the newly purchased land becomes ineligible to receive irrigation water in his holding. However, 3 weeks later, Landowner G makes an irrevocable election. Since he meets the requirements of a qualified recipient and

since he has become subject to the discretionary provisions, Landowner G may designate the newly purchased 160 acres as nonexcess. As a qualified recipient, he may also purchase and receive irrigation water on another 640 acres of eligible land.

Example (6). In 1986, Landowner H bought 160 acres of irrigable land from excess status in District Z. Landowner H, however, failed to get sale price approval from Reclamation. This land is ineligible for service in his holding unless the sale is reformed at a Reclamation-approved price. If the price is not reformed, the 160 acres must be sold to an eligible buyer at a Reclamation-approved price in order to become eligible to receive irrigation water.

Example (7). ABC Corporation, which was established under the laws of Switzerland, is owned by two stockholders who are citizens and residents of Switzerland. The corporation owns 480 acres of irrigation land in District X and has designated 160 acres as nonexcess and eligible to receive irrigation water, and the remaining 320 acres as excess and ineligible. District X subsequently amends its contract to conform to the discretionary provisions. Thereby, ABC Corporation becomes ineligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law. However, since 160 acres of its land were eligible to receive irrigation water under prior law, this land will continue to be eligible if it is placed under a recordable contract or sold to an eligible buyer. The 160 acres, whether or not under recordable contract, may be sold at fair market value; however, the 320 acres which were excess under prior law remain ineligible until sold to an eligible buyer at an approved price.

Example (8). Landholder O, a citizen and resident of Atlantis, is the sole stockholder in Corporation P, a qualified recipient legal entity registered in Idaho. Atlantis is a country which does not have a treaty with the United States calling for treatment of Atlantis corporations like U.S. corporations. In 1990, Corporation P purchased 960 acres of nonexempt land in District B. This land was all designated nonexcess under the then-current regulations. However, on the effective date of these regulations, Landholder O's ownership entitlement decreases to 160 acres, even for indirectly held land. The remaining 800 acres that become excess can continue to receive irrigation water if Corporation P places the land under recordable contract, and the land can be sold at fair market value and remain eligible if sold to an eligible buyer.

Comments Concerning § 426.12—Excess Land

General

Comment: Some commenters suggested that the approved sales price for excess land should be changed. Specifically, one suggestion was that the sales price approval process itself was a disincentive to selling excess land. Another commenter suggested excess land should be sold at the full-market price, with the difference between what would have been the approved price and the market price going as a tail-end credit to project costs.

Response: These comments have not been accommodated in the final regulations. Consistent with current policy, Reclamation sets the sales prices of excess land within a project at a price that reflects the value of the land without irrigation water service provided by the Federal project. Sale of the land at the lower price allows for a wider distribution of Reclamation benefits and greater fostering of family farming opportunities than would be possible if the land was sold at the full-market price.

Section 426.12(g)

Comment: Reclamation should explain what abuse, if any, is addressed by preventing a farmer from ever leasing land that the farmer previously sold from excess status. Some commenters suggested that if a prohibition was necessary, it should be limited to the term of the deed covenant.

Response: Reclamation agrees with the proposition that to prohibit the former owner of excess land from ever receiving irrigation water on that land was more limiting than necessary. Reclamation has modified the provision, as suggested, to restrict any limitation on receiving irrigation water to the period of the deed convenant associated with the sale. Once the deed covenant has expired, there will be no limitation on the ability of the former owner of the land to receive irrigation water.

Comment: If the landowner leases formerly excess land after it is sold and he or she exceeds his or her nonfull-cost entitlement, the former landowner must pay the full-cost rate for water delivered to that land. There is no difference between leasing previously owned excess land and leasing any other land either at the nonfull-cost rate or at the full-cost rate.

Response: Reclamation does believe there is a difference between leasing previously owned excess land and other land. The purpose of the regulation is to ensure that the anti-speculation provisions of Federal reclamation law are not evaded and to distribute the benefits of the program as widely as possible. However, Reclamation agrees that if the former owner is paying the full-cost rate for irrigation water delivered to the land in question, then the purposes of the law have been met. Accordingly, Reclamation has included a provision that allows a former owner of land that was excess in his or her holding, and who leases or otherwise acquires such land before the deed covenant expires, to receive irrigation water if the full-cost rate is paid and the land is otherwise eligible to receive irrigation water. Once the deed covenant expires, the requirement for full-cost payment will also terminate, unless the land would be otherwise subject to full-cost pricing.

Comment: This section overly restricts lenders.

Response: Reclamation has added an exception in the final regulations for financial institutions as defined in § 426.14 (Involuntary acquisition of land).

Comment: The regulations must also address the situation in which a landholder holds only a partial interest in an entity which leases land previously sold by the landholder.

Response: Reclamation has addressed this in § 426.12(g)(3). The full-cost rate will be applied to the proportional share of irrigation water delivered that corresponds to a part owner's interest in the entity.

Comment: Entities that sell excess land to individual part owners who are now farming separately appear to be barred by this proposed rule.

Response: Such former part owners face a number of restrictions if they should purchase land subject to a deed covenant. In fact, they would be able to receive irrigation water on the land, but until the deed covenant expires, they would have to pay the full-cost rate on an acreage that is equal to the amount of excess land that was attributed to them as part owners of the entity.

Comment: The intended application of the exception for a landholder who ''became or contracted to become a direct or indirect landholder of that land prior to July 1, 1995'' is extremely unclear. Administratively, this provision will be very hard to enforce and would put the districts into a position of policing leases on an annual basis.

Response: The July 1, 1995, date has been replaced with December 18, 1996.

Comment: What kinds of pre-July 1, 1995, contracts to become a direct or indirect landholder of formerly excess land meet the test of proposed rule § 426.12(g)(1)?

Response: Any contract that results in a person or entity becoming a landholder as that term is defined (see § 426.2).

Comment: The proposal to allow individuals to continue to evade the acreage limitations until July 1995 is unjustified and could erase much of the benefit of this reform. Such arrangements should not be allowed after 1982, or at the latest, 1987.

Response: This comment has not been accommodated in the final regulations.

Reclamation believes that it is appropriate to apply this provision prospectively only. Retroactive application would cause unnecessary hardship and potential legal problems.

Section 426.12(i)

Comment: The new clause (v) of the deed covenant should be revised to read: ''Upon the completion of an Involuntary Conveyance, the Secretary shall reconvey or otherwise terminate this covenant of record, except that during the original term of this covenant, it shall not be reconveyed for the benefit of an excess landowner who sold this land from excess status or for the benefit of a landholder who was previously subject to this covenant and who reacquired this land by an Involuntary Conveyance.''

Response: Reclamation has modified clause (v) of the deed covenant to reflect this suggestion. Additional modifications have also been made to reflect the revisions to § 426.12(g) and the exception for financial institutions found in § 426.14 (Involuntary acquisition of land).

Comment: There is no authority to restrict landholders from selling more than 960 acres in a lifetime (formerly excess land that was purchased at an approved price and sold at full market value). Also, why does this only apply to individuals and not to entities? There is apparently no restriction on the purchase and sale of nonexcess land which was not acquired from excess status [§ 426.12(i)(3)].

Response: Reclamation has retained the limitation on the sale of formerly excess land from the prior rules. The provisions are intended to ensure that the benefits of the Reclamation program are widely distributed by ensuring excess land is not used as a speculative investment. These provisions are not restricted to individuals, but is applicable to all landowners. Finally, the respondent is correct in that there is no restriction on the purchase and the sale of eligible land that was not acquired from excess status. In such cases, the excess land has not been used as a speculative investment based on the value added by the Reclamation project.

Section 426.13 Excess Land Appraisals

Section 426.13 in the prior regulations, *Exemptions*, is renamed *Exemptions and exclusions* and renumbered as § 426.16. The new § 426.13, *Excess land appraisals*, replaces § 426.12 of the prior regulations. Generally, only editorial changes have been made to the prior regulation. These changes are for clarity and without substantive effect. This section addresses how the approved price required for the sale or transfer of excess land, or land burdened by a deed covenant will be determined by Reclamation, if that land is to become eligible to receive irrigation water in the ownership of an eligible buyer.

The only significant change between the proposed and final versions was made to paragraph (e)(2), where it is now specified that the landowner requesting the appraisal is responsible for associated costs.

Paragraph (a) details when Reclamation appraises the value of land. Paragraph (b) provides the procedures used by Reclamation to perform appraisals. Paragraph (c) discusses the factors that may be considered and how information may be obtained for the appraisal of nonproject water supplies.

Paragraph (d) provides what will be considered to be the date of the appraisal. Paragraph (e) specifies who will pay for appraisals. Paragraph (f) discusses who will select the appraiser, while paragraph (g) provides the process that will be used to resolve appraisal disputes. Finally, paragraph (h) states that Reclamation will review all appraisals of excess land or land burdened by a deed covenant and provides what will be used in that process.

Comments Concerning § 426.13—Excess Land Appraisals

Section 426.13(c)

Comment: This section should not include an obligation to conserve the groundwater supplies supporting farms in Federal projects.

Response: This particular section of the rules provides a partial list of the factors that will be considered when appraising the value of excess land and how that information will be obtained. No other requirements are or should be implied.

Section 426.13(e)

Comment: Appraisal costs should be uniform throughout the West and should be kept as low as possible.

Response: A number of factors determine the costs of appraisal and these factors vary throughout the West. For example, in certain regions, data has been gathered over decades of processing excess land appraisals. The existence of this data results in lower costs as compared to other regions where the data must be developed for each excess land appraisal. Reclamation believes the costs of appraisals should be borne by the party who is benefitting from the ability to purchase excess land at below market values.

Section 426.14 Involuntary Acquisition of Land

Section 426.14 in the prior regulation, *Residency*, is deleted because residency has not been a provision of acreage limitation provisions since it was repealed by the RRA in 1982. The new § 426.14, *Involuntary acquisition of land*, replaces § 426.16 of the prior regulations. This section addresses how the acreage limitation provisions apply to land that is involuntarily acquired.

Paragraph (a) adds a definition that was not in the proposed rules, *financial institution*. This new definition accompanies the definition of *involuntarily acquired land* that was included in the proposed rule.

Paragraph (b) provides the conditions under which ineligible excess land that is involuntarily acquired may become eligible. Paragraph (c) provides the same information for land that was held under a recordable contract and that is involuntarily acquired. Paragraph (d) discusses how mortgaged land that is involuntarily acquired would be eligible to receive irrigation water.

A change from the prior rules was made in paragraph (e) of the proposed rules and is retained in the final rules with modifications. This paragraph discusses how acreage limitations apply to nonexcess land that becomes excess when it is involuntarily acquired. Like the proposed rules, paragraph (e) provides that land involuntarily acquired by a landowner, who held the land previously as excess or under recordable contract, is not eligible for application of the involuntary acquisition provision to receive water for 5 years. However, an exception is made to this prohibition in the final rules for financial institutions.

An additional change to paragraph (e) in the final rules reflects the changes discussed in § 426.12 regarding the reacquisition of formerly excess land by the party that originally held the land as excess. Incorporating the provisions of § 426.12(g), if a landholder involuntarily acquires nonexcess land that he or she had held as excess, and designates that land as excess upon the reacquisition, the landholder cannot use the involuntary acquisition provisions to receive water on that land for 5 years, unless one of the exceptions provided in § 426.12(g) applies or the landholder is a financial institution.

Paragraph (e)(iv) of the proposed rules has become a new paragraph (f) in the final rules. This paragraph explains that a landowner is not permitted to redesignate involuntarily acquired land as nonexcess, if the land was designated as excess when it was involuntarily

acquired, and if a higher water rate would have been owed because if the land had been designated as nonexcess in the first place. The only exception is if the landholder remits the difference in the rates to Reclamation.

What had been paragraph (f) in the proposed rules is paragraph (g) in the final rules. This paragraph describes the effect of involuntarily acquiring land that had been subject to the discretionary provisions if the acquiring party is subject to prior law. Unlike the prior and proposed rules, the final version highlights the situation in which a landholder would become subject to the discretionary provisions upon involuntarily acquiring land.

Finally, paragraph (h) provides when the 5-year eligibility period commences for land that is acquired by inheritance or devise.

The following examples illustrate the application of § 426.14:

Example (1). Farmer X owns 160 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions. Farmer X inherits another 480 acres of irrigation land in District B. District B has amended its contract to become subject to the discretionary provisions. Farmer X never previously held the inherited land as ineligible excess land or under a recordable contract. Even though Farmer X has reached the limits of his individual ownership entitlement under prior law, since the 480 inherited acres had been designated nonexcess and eligible in its prior ownership, the land continues to be eligible to receive irrigation water for a period of 5 years in Farmer X's ownership. However, since this land is located in a district subject to the discretionary provisions, the price of water delivered to this land must include at least full O&M costs and, if the land is leased to another landholder, the full-cost rate may apply, depending on whether the lessee has exceeded his nonfull-cost entitlement. Farmer X also has the option of selling the 480 acres at any time at full market value. As explained in paragraph (g) of this section, Farmer X would not become subject to the discretionary provisions by virtue of the fact that he involuntarily acquired land from a landowner subject to the discretionary provisions. However, Farmer X has the option of becoming subject to the discretionary provisions through an irrevocable election. In addition, if Farmer X was to request and receive approval for a redesignation of his nonexcess and excess land, and thereby some of the involuntarily acquired land became nonexcess, Farmer X would automatically become subject to the discretionary provisions. If he chooses either of these options, he can then include the 480 acres as part of his 960-acre ownership entitlement as a qualified recipient.

Example (2). Farmer A, a qualified recipient who owns 500 acres of irrigation land, purchases 160 acres of excess land from Bank ABC. Farmer A designates this 160 acres as nonexcess, eligible to receive irrigation water. The deed transferring the land contains the 10-year deed covenant requiring Reclamation sale price approval. Farmer A finances this purchase through Bank ABC. Subsequently, Bank ABC forecloses on Farmer A's 160 acres. Since the bank is a financial institution, it may receive irrigation water on this land for a period of 5 years at the same price which was paid by Farmer A, unless the land becomes subject to full-cost pricing through leasing. In addition, the bank may sell the land at fair market value without affecting the land's eligibility to receive irrigation water. The deed covenant shall be removed by Reclamation at the bank's request.

Example (3). Farmer Z owns 160 acres of ineligible excess irrigation land in District W. He decides to sell this land to his neighbor, Farmer Y, an eligible buyer. Farmer Z provides Farmer Y with the financing necessary for the purchase. The deed transferring the land to Farmer Y contains the 10-year covenant requiring sale price approval. The 160 acres of land burdened by a deed covenant becomes eligible to receive irrigation water in Farmer Y's ownership. During 1999, Farmer Y fails to meet his financial obligation to Farmer Z. Consequently, the land once again becomes part of Farm Z's ownership by foreclosure. Since Farmer Z is not a financial institution, he may not receive irrigation water on this land through the involuntary acquisition provisions, unless the land becomes exempt from the acreage limitation provisions, Farmer Z pays the full-cost rate for water delivered to the land, or the deed covenant expires. In addition, Reclamation will not remove the deed covenant requiring Reclamation price approval for the sale of the land.

Example (4). Landowner L, a qualified recipient, owns 800 acres of irrigation land in District M. Landowner L inherits 640 acres of land in District N from his grandfather. The inherited land was placed under a 5-year recordable contract by his grandfather 3 years ago. Landowner L signs an agreement to assume his grandfather's recordable contract to the 480 acres that remain excess in his landholding. However, even though the original recordable contract term expires in 2 years, since the excess land was involuntarily acquired, it remains eligible to receive irrigation water for 5 years from the date Landowner L involuntarily acquired the land. Within that 5-year period, however, Landowner L must sell the excess land at a Reclamation approved price.

Comments Concerning § 426.14—Involuntary Acquisition of Land

General

Comment: Reclamation should designate all land acquired involuntarily as excess unless the acquiring party deems otherwise; the acquiring party should not be forced to make that decision.

Response: This comment was not accommodated in the final regulations. Because of the consequences associated with land being designated as excess, it is the landholder's responsibility to make such designations. Reclamation will only make such designations if the landholder and district do not do so as provided for in § 426.12 (Excess land). In the case of involuntarily acquired land, if the landholder or district does not designate the land as excess and the landholder's holding has not exceeded the applicable ownership entitlement, such land up to the landholder's ownership entitlement will be assumed to be nonexcess by Reclamation if irrigation water is delivered to that land. Only when the landholder's ownership entitlement would be exceeded, will Reclamation designate the involuntarily acquired land as excess when the landholder and district do not make such a designation. For land involuntarily acquired, the land will remain ineligible to receive irrigation water until the land is designated.

Comment: A qualified recipient who sells to a limited recipient should not be restricted to 960 acres in the case of foreclosure.

Response: There are no general exceptions to the acreage limitation restrictions that have been established by statute. However, in many cases the qualified recipient could receive water on the land for at least 5 years, even if the ownership entitlement is exceeded. Relevant factors include: if any nonexcess eligibility remains in the foreclosing party's ownership entitlement; if the foreclosing party sold the involuntarily acquired land from excess status or held it under recordable contract; if the entity is a financial institution; if any of the exceptions provided in § 426.12(g) apply; and if the status of the land was nonexcess immediately prior to foreclosure.

Comment: Foreign ownerships should be able to take full advantage of the involuntary acquisition rules, as the current interpretation in the Central Arizona Project.

Response: Reclamation believes the respondent is commenting on the practice that land that is held indirectly and was acquired involuntarily does not have to be considered in determining if an RRA form must be completed. This practice has been codified in § 426.18(g). This provision is applicable regardless of the nationality of the involuntarily acquiring party. Foreign entities or nonresident aliens who involuntarily acquire land are treated no differently from citizens of the United States and domestic entities.

Section 426.14(a)

Comment: Would an acquisition of a deed in lieu of foreclosure fit the ''sale

from the previous landowner is canceled'' situations described in § 426.12?

Response: A deed in lieu of foreclosure is considered to be an involuntary acquisition by the lender, but may not be a canceled sale from a previous land owner.

Section 426.14(b)

Comment: A commenter stated that there is no justification to require a deed covenant on land that is declared as nonexcess by the landholder as specified in § 426.14(b), since it was originally sold in accordance with RRA requirements and the acquiring landholder had no control over the land's status until it was involuntarily acquired.

Response: This comment was not accommodated in the final regulations. The respondent is assuming that all land involuntarily acquired was never excess or it was sold at an approved price. That is not always the case. Section 426.14(b) addresses situations where the land was excess in the previous landholding and is involuntarily acquired. If the acquiring party declares it as nonexcess, it is appropriate to require a deed covenant and restrict the sales price for 10 years, just as Reclamation does for any excess land that is designated as nonexcess.

Comment: Involuntarily acquired excess land should be eligible as long as the new landowner is within his acreage limitations.

Response: Reclamation agrees. As in the prior and proposed rules, this paragraph of the final rules provides a method for the new landholder to make such land eligible.

Section 426.14(d)

Comment: Deed covenant restrictions should be removed from § 426.14(d).

Response: There are no requirements to include deed covenants in § 426.14(d). In fact, that section is clear that deed covenants will not apply [§§ 426.14(d)(1)(iii) and 426.14(d)(2)].

Comment: Any nonexcess land a seller involuntarily acquires should not require a deed covenant to be considered nonexcess, even if the buyer designates the land as excess after the mortgage is recorded.

Response: The rules provide for this interpretation if the land was involuntarily acquired.

Section 426.14(e)

Comment: All farmers in the West receiving water through Reclamation should not be denied broad access as intended by Congress because Reclamation failed to pursue a few non bona fide transactions concerning the reacquisition of excess land.

Response: Congress was very specific as to what involuntarily acquired land would be eligible to receive water. Reclamation has for many years interpreted this provision to not allow the delivery of water to land that was excess when it was involuntarily acquired, unless the new landowner declares it as nonexcess and includes the required covenant in the deed. The only exception is for certain mortgaged land. The proposed rules refined this limitation by stating that if the involuntarily acquiring party had sold the land from excess status, whether or not it was under a deed covenant, the same prohibition on receiving irrigation water would apply.

The final rule provides exceptions to this restriction for financial institutions. The final rule also limits the application of the restriction to the period of the deed covenant and provides an additional exception if the full-cost water rate is paid. The final rule version fully implements the law, ensuring that excess land is fully disposed of by the landowner if it is to become eligible.

Comment: Some commenters noted that they believe Reclamation has had difficulty determining whether financing and/or foreclosure were bona fide. They asked that these difficulties be described along with an explanation of why they justify a flat prohibition on receiving water for 5 years and not being able to remove the deed covenant.

Response: It is sometimes difficult to determine whether a foreclosure occurred at arms length when the parties have prior or ongoing business relationships. Reclamation has excepted financial institutions from the restrictions on receiving water and removing the deed covenant. Reclamation understands that such organizations often lend to farmers based on the market value of the land rather than on the purchase price that has been approved by Reclamation. Such institutions are less likely to be motivated by the chance to foreclose on such property in the future to obtain a windfall profit than are other less well regulated entities and individuals.

Reclamation does not believe individual lenders necessarily are driven by the same motives as financial institutions. Accordingly, lenders that are not financial institutions have been provided notice that Reclamation will not allow them to reacquire their formerly excess land and then sell it at full market value in the future. Thus, such lenders cannot sell the land at full market value until the deed covenant expires. In addition, such former owners will not be given the 5-year grace period for receiving irrigation water on involuntarily acquired land declared as excess in their holdings.

Comment: Rules concerning involuntary acquisition could affect lending institutions to the degree of not being able to loan money to farmers if those institutions have no entitlement available.

Response: Reclamation has included an exception for financial institutions that involuntarily acquire land they formerly held as excess from the restriction on receiving irrigation water on the land or selling such land at full market value.

Comment: The regulations could stop farmers from helping employees start farms by loaning money to buy excess land.

Response: If the excess land was sold by the farmer at an approved price, the farmer who is helping his employee to buy the land would be able to recoup the loan amount as long as the farmer involuntarily acquired that land, even if the farmer was the owner of the land when it was excess. This is because the farmer could, again, sell the land at the approved price.

Comment: Landholders who reacquire land that was previously excess in the landholders' holding prior to its sale should not be allowed to receive irrigation water following reacquisition, because the landholder is no worse-off as a result of the involuntary acquisition.

Response: In general, Reclamation agrees with this comment. In the proposed rule, Reclamation applied this interpretation to all involuntary acquisitions. As discussed above, in the final rule, financial institutions, as defined, have been exempted from this application.

Comment: Parties that involuntarily acquire land should be able to designate such land as excess, receive water on such land for 5 years, and then be able to redesignate such land as nonexcess. The current rules allow these actions.

Response: Reclamation has adjusted the final rule by adding a new § 426.14(f) to allow such actions with two conditions: (1) the landowner must follow the normal redesignation procedures; and (2) if a higher water rate would have been paid if the land had been designated as nonexcess upon involuntary acquisition, then the landowner must remit to the Federal Government the difference between the rate paid and the rate that would have been paid if the land had been designated as nonexcess rather than excess upon the involuntary acquisition.

Comment: This section and other appropriate sections should be modified to allow an extension of the 5-year disposal period, if certain criteria are met.

Response: This comment has not been accommodated in the final regulations. The commenter may be confusing the 5-year period for receiving irrigation water on involuntarily acquired land designated as excess with the 5-year period typically found in recordable contracts. The 5-year period for receiving water on involuntarily acquired land only addresses the period of time the excess land may receive irrigation water. After that period of time, the land becomes ineligible excess land. Whether the landowner wants to sell the land at that point is up to the landowner, since there is no requirement to sell the land.

Section 426.15 Commingling

Section 426.15 in the prior regulations, *Religious and charitable organizations*, is renamed Religious or charitable organizations and renumbered as § 426.9. The new § 426.15, *Commingling*, replaces § 426.18 of the prior regulations. This section describes how the acreage limitation provisions apply if water from project and nonproject sources are commingled before delivery to landholders.

Editorial changes have been made to the prior and proposed regulation. Except as noted, no substantive changes are intended. In addition, as in the proposed rule, *commingled water* is defined in paragraph (a), but the definition of *nonproject water* that was found in this paragraph has been deleted. Instead, the definition of *nonproject water* may be found in the definitions section since that term is used outside of this section.

Paragraph (b) discusses the application of Federal reclamation law and these regulations to commingling provisions already included in contracts. Paragraph (c) provides how new commingling provisions may be established in contracts and how Federal reclamation law and these regulations will be applied. Finally, paragraph (d) discusses when Federal reclamation law and these regulations do not apply.

The following examples illustrate the application of § 426.15:

Example (1). District A has a distribution system constructed without funds made available pursuant to Federal reclamation law and irrigates land therein with nonproject surface supplies and ground water distributed to users within the district through its distribution system. The district enters into a contract with the United States for a supplemental irrigation water supply and intends to distribute that supplemental water through its distribution system. Only the landholders within the district who are eligible to receive a supply of irrigation water as specified in § 426.15(c)(1) are subject to reclamation law. The district is not restricted in its use of the nonproject surface water or ground water, and will be in compliance with the provisions of its contract so long as there is sufficient eligible land to receive the Reclamation irrigation water supply.

Example (2). District A has a contract with Reclamation for a supply of irrigation water. Within the boundary of the district there are several parcels of ineligible excess lands which are not supplied with irrigation water. Those lands are irrigated from the ground-water resources under them. If irrigation water furnished to the district pursuant to the contract reaches the underground strata of these ineligible lands as an unavoidable result of the furnishing of the irrigation water by the district to eligible lands, the continued irrigation of the ineligible excess lands with that ground water shall not be deemed to be in violation of reclamation law.

Note: Example 2 also is applicable to the issue of unavoidable ground-water recharge.

Example (3). A district has nonproject water available to deliver to lands considered ineligible for irrigation water under provisions of Federal reclamation law and these regulations. To eliminate the need to build a duplicate private conveyance system to transport nonproject water, the district would like to transport such water through facilities funded with monies made available pursuant to Federal reclamation law without the nonproject water being subject to Federal reclamation law and these regulations. If the district agrees, with prior Reclamation approval, the nonproject water may be commingled in federally financed facilities and delivered to ineligible lands if the district pays the incremental fee, as determined by Reclamation, for the use of the federally financed facilities required to deliver the nonproject water. The fee will be in addition to the capital, operation, maintenance, and replacement costs the district is obligated to pay and will be based on a methodology designed to reasonably reflect an appropriate share of the cost to the Federal Government, including interest, of providing the service.

Example (4). The State of Euphoria has a water supply it wishes to transport in the same direction and elevation as planned in the Federal reclamation project. If Reclamation and the State each finance their share of the costs to construct and operate the project, the water supply of the State will not be subject to Federal reclamation law and these regulations.

Example (5). District A has water rights to divert water from a river. These water rights are adequate to meet its requirements. It is located immediately adjacent to a federally subsidized facility, District B. District B is located immediately adjacent to the river but several miles from the Federal facility. District B contracts with the United States for a supply of irrigation water, but rather than construct several miles of conveyance facility, District B, with the approval of the United States, contracts with District A to allow District A's water rights water to flow down the river for use by District B, and the irrigation water is in turn delivered to District A. District A is not subject to Federal reclamation law and these regulations by virtue of this exchange, provided it does not materially benefit from that exchange. District B, however, is subject to Federal reclamation law and these regulations since it is the beneficiary of the exchange, i.e., a water supply.

Comments Concerning § 426.15—Commingling

General

Comment: The proposed rules should recognize that commingling is a fact of life and that often the Reclamation supply is only a minor part of the overall irrigation water supply.

Response: Reclamation recognizes that often the supply from a Reclamation project is only a supplemental supply. The rules recognize the existence of commingling in contracts.

Comment: The proposed commingling provision does not give any consideration for allocating evaporation, shrinkage, and other administrative losses between primary water and project water.

Response: This comment has not been accommodated in the final regulations. Neither the RRA nor the acreage limitation provisions of these regulations address the amount of water received by any individual landholder. Rather, these provisions address what land may receive any irrigation water delivered from or through a Federal facility and the price charged for this water.

Section 426.15(a)

Comment: Reclamation should not define as project water all water that is commingled and then impose acreage limitations on any land commingled water irrigates.

Response: Whether or not nonproject water is subject to the acreage limitation provisions depends primarily on the terms of the contract with the district. This section of the rules only provides the parameters that must be met if nonproject water is not to be subject to the acreage limitation provisions.

Section 426.15(b)

Comment: The proposed rules seem to change the application of this section so that it may apply only to contracts renewed at some earlier time and not to all renewals.

Response: Reclamation has adjusted the provision to make it clear that it applies for the term of existing contracts

and any renewals. However, the provision does not apply to contracts that are no longer in effect.

Comment: This section should be amended to include existing contracts which contain commingling provisions separate and apart from repayment contracts.

Response: This paragraph applies to repayment, water service, and other types of contracts and any renewals of those contracts.

Section 426.15(c)

Comment: The proposed commingling provisions do not address the situation where the distribution system is entirely privately owned and operated and Reclamation water can only be delivered through that system.

Response: In fact, the prior, proposed, and final rules address such situations. See § 426.15(c)(1) of the final regulations.

Comment: What authority does Reclamation have to impose a limit upon the amount of water a landowner could use on his lands [§ 426.15(c)(1)(ii)]? Such may interfere with landowner's property rights.

Response: The provision in question does not limit the amount of water a landowner may use. Rather, it is used strictly to determine if Federal reclamation law will apply to all landholders in a district or only those landholders who receive project irrigation water, as opposed to nonproject water. If facilities used to commingle water were built without Federal funds and the district is to receive more irrigation water than is equal to the quantity necessary to irrigate eligible lands, all landholders in the district will still be able to receive water. But all landholders will then be subject to Federal reclamation law and these regulations. Reclamation included this provision pursuant to Reclamation's authority to implement the RRA and its authority to make water available for irrigation purposes.

Comment: Section 426.15(c)(2) is illegal, in that it exempts lands from Reclamation law if the water users pay for only a portion of the facility that they use that was built at Federal expense.

Response: Reclamation disagrees with the commenter. Reclamation law, and the RRA give Reclamation in some instances discretion to negotiate contracts to provide for the use of facilities instead of a repayment or water service contract.

Comment: Additional charges should not be imposed for the handling of waters which are or become commingled with project water. To do so is outside the scope of the RRA.

Response: Reclamation believes this comment is in reference to § 426.15(c)(2). This provision was included in the prior rules because a method was requested to allow districts using federally funded facilities and commingled water not to have acreage limitation apply to nonproject water. If the district chooses to not include this provision in its contract or not to pay the incremental fee, then the nonproject water will be subject to acreage limitation. Reclamation does not impose the fee; the decision on how commingled water will be treated with respect to the acreage limitation provisions under these circumstances rests with the district.

Section 426.16 Exemptions and Exclusions

Section 426.16 in the prior regulation, *Involuntary acquisition of land*, is renumbered as § 426.14. The new § 426.16, *Exemptions and exclusions*, replaces § 426.13 of the prior regulation. This section provides the general exemptions and exclusions from application of the acreage limitation provisions.

This section has been rewritten mainly for editorial changes and clarification. Other than paragraph (f), no substantive change is intended. Additional editorial changes were made in the final version from the proposed rule.

Paragraph (a) provides an exemption for land that receives its agricultural water from an Army Corps of Engineers project. Paragraph (b) discusses how districts or individuals can repay their construction obligations and what effect such action has on application of the acreage limitation provisions.

Paragraph (c) discusses how Reclamation treats Rehabilitation and Betterment loans with respect to application of the acreage limitation provisions. It should be noted that a given contract action could be considered an additional or supplemental benefit pursuant to § 426.3 of these final regulations even though it neither invokes nor extends the application of acreage limitation provisions in general. For example, Rehabilitation and Betterment Act contracts are considered additional and supplemental benefits under § 426.3 even though they would neither extend nor reinstate the application of acreage limitations, as provided in § 426.16.

Paragraph (d) provides how the acreage limitation provisions will be applied to deliveries of temporary supplies of water if they result from an unusually large water supply or are otherwise unmanageable flood flows of short duration.

Paragraph (e) addresses the issue of isolated tracts and how the acreage limitation provisions apply if a landowner requests an isolated tract determination and Reclamation approves the request. This paragraph was adjusted in the final rule to eliminate redundancy in the proposed rule.

Paragraph (f) was added to the proposed rule and is retained in the final rule to make it clear that the acreage limitation provisions are not applicable to Indian trust or restricted lands. This provision was adjusted in the final rule to address both the acreage limitation provisions and water conservation provisions of the RRA.

Comments Concerning § 426.16—Exemptions and Exclusions

General

Comment: All eligible projects in Arizona (CAP, Wellton-Mohawk, and the Salt River Project) should be included in exemptions from the RRA and conservation mandates.

Response: This comment has not been accommodated in the final regulations. There is no authority to exempt a district from application of acreage limitation requirements before the district repays its contract obligations. Even upon payout, districts generally remain subject to certain RRA requirements, such as the water conservation provisions.

Comment: The rules should declare that any change in use of water for purposes other than the use(s) originally specified in the contract shall require the participation of the United States in sharing any of the windfall profits which might result. Moreover, any proposed change in irrigable acreage in a paid out project should require the approval of the United States if only for reasons of water quality protection.

Response: These issues are contractual issues, not acreage limitation issues. There is no authority for restricting a district's payout exemption from the acreage limitation provisions to satisfy non-acreage limitation goals.

Section 426.16(b)

Comment: How does the term ''subsidized Reclamation project water'' apply to paid out districts that pay the actual O&M charges assessed by Reclamation each year?

Response: Section 426.16(b) exempts land in districts that have repaid applicable construction costs. Thus, that

term has no application with regard to the acreage limitation provisions in such districts.

Comment: Reclamation should notify both individuals and the district when a landowner repays his contract so the information can be verified and included in the district's records [§ 426.16(b)(3)(i)].

Response: This comment has been accommodated in the final regulations.

Comment: Landholders should be given a certificate of repayment in a timely manner [§ 426.17(b)(3)(iii)].

Response: Once a final payment has been received, a process is initiated by Reclamation to ensure the landholder is paid out and all requirements have been met. Often this is a time consuming process, but once completed, certificates are immediately made available upon request.

Section 426.16(c)

Comment: Sections 426.16 (b) and (c) with regard to rehabilitation and betterment loans should be retained in the final regulations.

Response: Section 426.16 (b) and (c) have been retained in the final rules with some minor editorial changes.

Section 426.16(d)

Comment: Reclamation should establish reasonable criteria for determining when a Section 215 flood event occurs and incorporate those criteria into the final regulations.

Response: Reclamation has adopted the statutory criteria for determining a temporary supply of water. Specifically, a flood event occurs when Reclamation determines the existence of an unusually large water supply not otherwise storable for project purposes or infrequent or otherwise unmanaged flood flows of short duration. The unusual hydrologic conditions, the wide range of physical constraints possessed by project facilities, and variations in State law make it unwise to attempt to further refine the statutory criteria.

Comment: Several comments expressed a wide range of opinions on the conditions under which Reclamation should declare a temporary supply of water. Some commenters wanted Reclamation to make a declaration if it captures an unusable amount of water during a drought. Others wanted a definition that maximizes groundwater recharge for the purpose of overdraft protection. Still others suggested a definition that would limit declarations to those instances where releases were needed to prevent exceeding the dedicated flood control space of a reservoir or similar genuine flood conditions.

Response: The declaration of a temporary supply of water is based on site specific hydrologic conditions and State law. While drought and groundwater recharge may at times contribute to these conditions, Reclamation evaluates the physical limitations of facilities in the context of the specific hydrologic conditions before making a declaration of the availability of temporary water supplies. Similarly, Reclamation will not limit itself to making a declaration only at a time when it is confronting a flood situation.

Section 426.16(f)

Comment: Commenters submitted opposing views concerning the proposed exclusion of Indian trust or restricted lands from application of the acreage limitation provisions. Some stated that Indian trust land should not be treated any differently than any other land. On the other hand, others not only supported the proposed version but wanted the exclusion expanded to include Indian irrigation projects.

Response: Indian trust and restricted lands are owned by the United States for the benefit of the tribes. These lands are not meant to be subject to the acreage limitation provisions of Reclamation law. As for Indian irrigation projects, they will be excluded if they are delivering water to Indian trust or restricted lands or are not considered to be Reclamation project facilities.

Comment: If a district or legal entity buys or leases water from a tribe that is exempted under § 426.15(f) [426.16(f) in the final rules], would the district or entity be bound by the acreage limitation provisions?

Response: Section 426.16(f) excludes Indian trust or restricted lands from application of the acreage limitation provisions. It does not exclude land held in districts by entities or individuals that may purchase Indian water. If the water in question is delivered to a district that is subject to the acreage limitation provisions, then that district will remain subject to those provisions. This is due to the contract provisions the district has with Reclamation. The purchase of water from a tribe does not discharge the district's contract obligations with Reclamation.

If the irrigation water in question was subject to the acreage limitation provisions, but such provisions are not applicable when the water is delivered to Indian trust or restricted lands, the delivery of such water to nonexempt lands will include the application of those provisions.

If the water is sold to a district that is not subject to the acreage limitation provisions, then the purchase of the water from a tribe that is also not subject to those provisions would not in itself require application of the acreage limitation provisions.

Section 426.17 Small Reclamation Projects

Section 426.17 in the prior regulation, *Land held by governmental agencies,* is renamed *Public entities* and renumbered as § 426.10. The new § 426.17, *Small reclamation projects,* replaces § 426.21 of the prior regulation. This section discusses the effect of the RRA on Small Reclamation Projects Act (SRPA) projects and the effect of SRPA contracts on application of the acreage limitation provisions.

The only substantive changes that are made to this section are in paragraphs (a) and (b). Paragraph (a) address the effect the RRA has on contracts made under the SRPA. Specifically, districts with such contracts were entitled to take advantage of the higher entitlements of the RRA. The proposed rule incorporated the fact that Pub. L. 99–546 closed this opportunity on October 27, 1986. The final rules note the provision included in that public law that provides for a 320-acre entitlement instead of the original 160-acre entitlement.

Paragraph (b) addresses how other provisions of these regulations apply to SRPA loans. A phrase has been added to the final version to reflect the fact that SRPA loans are considered additional and supplemental benefits as provided in § 426.3 of the final regulation.

Paragraph (c) discusses the effect of SRPA loans in determining whether a district has repaid its water service or repayment contract construction obligations. Paragraph (d) addresses instances in which districts have both an SRPA loan contract and another contract as that term is defined in the regulations.

The following example illustrates the application of § 426.17:

Example. District A has entered into both a repayment contract and an SRPA loan contract. In 1983, District A amended its SRPA loan contract pursuant to Section 223 of the RRA in order to increase the interest threshold for its owners to 960 acres for a qualified recipient and 320 acres for a limited recipient. However, District A has not amended its repayment contract to become subject to the discretionary provisions, and is, therefore, still subject to the acreage limitations of prior law. Even though this SRPA contract permits an increased threshold for interest payments, until District A becomes subject to the discretionary

provisions it may not deliver irrigation water to land owned in excess of the prior law entitlements (160 acres or 320 acres for a married couple), except in those cases where such land is under recordable contract, is owned by an individual who has made an irrevocable election, or commingling provisions in the district's contract allow nonproject water to be delivered to excess land, see § 426.15.

Comments Concerning § 426.17—Small Reclamation Projects

No comments were received concerning this section.

Section 426.18 Landholder Information Requirements

Section 426.18 in the prior regulation, *Commingling,* is renumbered as § 426.15. The new § 426.18, *Landholder information requirements,* replaces, in part, § 426.10 of the prior regulation. This section provides the requirements to submit information to Reclamation, how that action is normally accomplished through the submittal of RRA forms provided by Reclamation, and exceptions to the RRA forms requirements.

This section has been rewritten to address only the certification and reporting requirements of landholders. Accordingly, a new definition paragraph and section regarding district responsibilities (§ 426.19) have been added. In addition, a new section concerning Reclamation audits (§ 426.25) has been added.

This section clarifies district certification and reporting requirements. References found in the prior rules to the contents of the certification and reporting forms have been deleted because a comprehensive list of these contents is unnecessary and unwieldy for these regulations, and a partial list is inappropriate.

Also deleted is the provision in the prior rules that specified that limited recipients had to identify all part owners who own more than 4 percent of the limited recipient and whose ownership interest would constitute an attribution of 40 acres. Reclamation has found that information is generally not available to verify the 4 percent requirement. Therefore, in the future, limited recipients will only have to include the names of those part owners whose ownership in the entity results in an attribution of more than 40 acres.

Paragraph (a) provides a definition of *irrigation season* because that term is used in this section. The final rules do not include the definition of *standard certification or reporting forms* because that term is already defined in § 426.2.

Paragraph (b) specifies who must provide information to Reclamation, while paragraph (c) details who must submit RRA forms. The final version of paragraph (c) makes it clear that such forms must be submitted annually.

Paragraph (d) provides what information is required to be provided on the RRA forms. Paragraph (e) specifies that the RRA forms must be submitted to each district where the landholder directly or indirectly holds land.

Wholly-owned subsidiaries are specifically exempted from forms requirements in paragraph (f), provided the ultimate parent legal entity has met its forms requirement.

The 40-acre certification and reporting exemption threshold found in the prior rules is replaced in paragraph (g) with a new system which permits higher exemption thresholds for qualified recipients. Unlike the proposed rules which included 5-acre thresholds for certain limited recipients, 80-acre thresholds for other limited recipients, and ceilings, but no fixed thresholds for qualified recipients, the final rules retain the 40-acre threshold for all prior law and limited recipients.

As for qualified recipients, if a district has conformed by contract with the discretionary provisions and the district's financial obligations to Reclamation are not delinquent, the district will be granted Category 1 status. Category 1 status provides an RRA forms threshold for qualified recipients of 240 acres. Districts that do not meet the two criteria, will be called Category 2. Qualified recipients in such districts will have an 80-acre RRA forms exemption threshold. As in the proposed rules, paragraph (g) also provides that: wholly-owned subsidiaries do not have to file; Class 1 equivalency factors cannot be used in determining if a RRA forms threshold has been exceeded; and indirect landholders need not count involuntarily acquired land that has been designated as excess by the direct landholder in determining if their holdings exceed the applicable RRA forms threshold.

Paragraph (h) provides the criteria listed in the preceding paragraph for determining if a district is a Category 1 or 2 district for purposes of establishing the RRA forms threshold for qualified recipients. This provision has changed from the proposed rule in that the requirement for having entered into a partnership agreement with Reclamation to be considered a Category 1 district has been revised. Instead of the requirement for financial obligations to the United States not being delinquent, the final rule has been modified so that Category 1 districts have no delinquent financial obligations to Reclamation. This paragraph also specifies what will be considered in determining if a district's financial obligations with Reclamation are current.

Paragraph (i) describes how Category 1 status will be applied. Since the thresholds are now fixed, the provision in the proposed rule that established the actual thresholds in partnership agreements has been deleted. In addition, this paragraph has been revised to state that the Category 1 status will be withdrawn.

Under the proposed rule, the actual application of the RRA forms threshold to landholders who hold land in Category 1 and 2 districts, in effect, required the districts to be aware of the RRA forms status of all districts. The final rule simplifies this process in paragraph (j) in that the RRA thresholds that are applicable to any particular district will be applicable to all landholders in that district regardless of where they may hold land westwide.

Paragraph (k) provides the requirements for notification of landholding changes if the changes occur after the landholder has submitted the annual forms. The final rules adjust the time frames for reporting landholding changes from 15 to 30 days for notifying the district and from 30 to 60 days for submitting new RRA forms. Paragraph (l) provides an opportunity to submit verification forms if a landholding has not changed from the previous year.

Paragraph (m) was added in the proposed rule to state that landholders that have not filed the required forms are not eligible to receive irrigation water. In the final rule, the phrase ''the district must not deliver,'' was added to the previously included phrase ''the landholder is not eligible to receive and must not accept delivery of irrigation water'' to make it clear that the district as well as the landholder is responsible for water deliveries in the absence of the required forms.

Paragraph (n) provides the actions Reclamation may take if false statements are made on the RRA forms. Included in this paragraph is the paragraph contained on the RRA forms providing for the possibility of criminal penalties for fraudulent statements. Paragraph (o) provides the Office of Management and Budget information requirements, while paragraph (p) provides information on the Privacy Act of 1974.

The following examples illustrate the application of § 426.18:

Example (1). Landholder A failed to submit the required certification forms to District X

in 1994 and 1995. District X delivered, and Landholder A accepted delivery of, irrigation water in those years. Landholder A submitted certification forms for 1996; however, Landholder A's landholding is not eligible to receive irrigation water until he submits the necessary forms for 1994 and 1995.

Example (2). Corporation A, which is registered in Venezuela, owns 100 percent of the stock of Corporation B, which is registered in Iowa. Corporation B, in turn, owns 100 percent of the stock in Corporations C and D, each of which are registered in Arizona and own and irrigate nonexempt land in two different Arizona irrigation districts. The landholdings exceed applicable certification and reporting exemption thresholds. Corporation A, the parent legal entity, must submit RRA forms to both Arizona districts. The forms must describe the corporate structure and Corporation A's entire landholding, including those of its subsidiaries. Furthermore, any stockholders of Corporation A that exceed applicable RRA forms thresholds must submit the necessary forms in order for the landholding to be eligible. Corporations B, C, and D are not required to file RRA forms provided that Corporation A files RRA forms and includes the holdings of its wholly owned subsidiaries on those forms.

Example (3). In August 1997, District A amends its contract to conform to the discretionary provisions. Since District A is not delinquent in its financial obligations, the regional director determines that District A is a Category 1 district. Accordingly, qualified recipients in the district will have a 240-acre RRA forms threshold, starting with the 1998 water year. Limited recipients and prior law recipients will continue to have the 40-acre RRA forms threshold applied.

Example (4). Landholder A is a qualified recipient who leases 120 acres in District X and 40 acres in District Y. For 1998, District X achieves Category 1 status, but District Y does not. Landholder A must therefore submit RRA forms in District Y, because he exceeds the RRA forms threshold for qualified recipients of 80 acres held westwide for that district, but he does not have to submit RRA forms in District X, because he does not exceed the RRA forms threshold of 240 acres held westwide for that district.

Example (5). Bank Y is a limited recipient and has 12,000 acres of involuntarily acquired excess landholdings. Bank Y has also designated 640 acres as nonexcess. Stockholder A, a qualified recipient, owns a 15 percent interest in Bank Y. Thus, Stockholder A is attributed with 1,800 acres of involuntarily acquired excess land and 96 acres of nonexcess land. The fact that most of its landholdings are involuntarily acquired does not afford Bank Y with any exemption with respect to RRA forms thresholds, because the bank is the direct landholder. Therefore, Bank Y must file certification forms. Since Stockholder A is an indirect landholder, she need not consider the bank's involuntarily acquired excess land in determining whether she is required to certify. However, she must consider the 96 acres of attributed nonexcess land. If Stockholder A exceeds an RRA forms threshold, she would be required to include all land attributed to her, including that land involuntarily acquired, on her RRA form(s).

Example (6). Corporation E leases 640 acres in a Category 1 district. Corporation E is 90 percent owned by Corporation F, 5 percent owned by Corporation G, and 5 percent owned by Farmer B. Corporations E and F are limited recipients that did not receive irrigation water on or before October 1, 1981. Corporation G is a limited recipient that received irrigation water on or before October 1, 1981, and currently has no landholding outside of Corporation E. Farmer B is a qualified recipient who also directly owns 320 nonexempt acres in the same district. Corporations E and F must both file because both have exceeded the applicable 40-acre threshold, and because Corporation E is not wholly owned by Corporation F. Corporation G need not file, because it is subject to a 40-acre threshold and its indirect holdings westwide total only 32 acres. Farmer B must file because he has exceeded the applicable 240-acre threshold.

Example (7). Farmer C owns 440 acres in a Category 1 district. After the district's last delivery in 1996, Farmer C buys another 40-acre parcel in the same district. Farmer C need not submit new RRA forms until the start of the next irrigation season.

Comments Concerning § 426.18—Landholder Information Requirements

General

Comment: The forms requirements have become very time consuming and districts are faced with huge fines for what are often inadvertent errors.

Response: The RRA requires certification. Moreover, Reclamation has never issued a compensation bill for minor problems associated with errors and omissions on RRA forms. Such bills were issued only in instances where irrigation water was delivered without any attempt to file appropriate forms. Reclamation does not consider refusal to file to be minor, inadvertent, or insignificant. Since March 27, 1995, compliance problems with the RRA forms requirements have been addressed through the administrative costs section (see § 426.20 of the final regulations).

Comment: Some commenters believed that Reclamation should consider a waiver of paperwork for districts in which only a small portion of the total water supply is from a Reclamation project or base the threshold on conditions found within the district, such as the average size of the landholdings.

Response: The RRA forms requirements must be applied consistently in order to ensure that no landholder exceeds his westwide entitlement.

Comment: The forms for land held by a bank or managed by a farm management corporation should be able to be signed by those entities without a signature authorization form.

Response: If the land in question is owned or leased by a bank, then a bank officer may sign the form without a signature authorization card. A farm manager may not sign the forms unless he or she directly or indirectly is the landholder of the land in question or the landholder has provided the farm manager the power of attorney to sign the forms. The completed forms report westwide landholdings so that the district and Reclamation will be able to determine if the landholder, not the farm manager, is eligible to receive benefits associated with the delivery of irrigation water. Thus, the certifying official must be able to attest to the entire westwide landholding of the entity included on the form.

Comment: The annual changes to the forms' requirements are not making it easier, but more confusing and results in errors.

Response: Reclamation has strived to minimize annual changes to the RRA forms. However, whenever changes are made to the regulations, as was the case in 1987, or the RRA is amended, as was the case in 1988, significant changes to the forms are often required. During 1996, Reclamation studied the RRA forms in-depth and made adjustments to facilitate their use and ease the filing requirements starting with the 1997 water year. Public input was part of this process. Reclamation will also have to make some adjustments as a result of this rulemaking starting with the 1998 water year. Once the 1998 water year forms are finalized, Reclamation does not plan to make any further major adjustments to the RRA forms.

Section 426.18(b)

Comment: The filing requirements are hard to decipher. Who is supposed to file forms?

Response: All landholders, as defined, must annually file an RRA form prior to receiving irrigation water, except as set forth in § 426.18(g).

Comment: Define ''other parties'' as used in to whom information about nonexempt land can be required. Also, provide who is being referenced in ''involved in the * * * operation of nonexempt land.''

Response: Other parties can be any entity or person who is involved in the operation of land subject to the acreage limitation provisions. Because of the great variety of farming arrangements, ''other parties'' may change on a case-by-case basis. However, other parties may include among others: farm managers, custom service providers,

lenders, employees, electrical companies, ditch riders, farm supply companies, etc.

Section 426.18(c)

Comment: We would like a simplified RRA form for landholders who hold up to 150 acres.

Response: In response to earlier comments, Reclamation developed ''EZ'' forms that may be used by landholders who meet certain requirements. The ''EZ'' forms are relatively simple and should take very little time to complete. In addition, if a landholding does not change from year to year, a verification form may be submitted by the landholder, which should take less than 15 minutes to complete. Unfortunately, the more complicated a landholder's holdings, the more complicated are the forms that must be completed, regardless of how many acres are held. For example, if a landholder owns 100 acres and leases 50 more, with some land owned directly and other land owned through an entity in multiple districts, it will take that landholder more time to complete a form than a landholder who directly holds 150 acres in one district.

Comment: What does a district do if the farm manager does not know who owns a corporation's shares and does not know how to find out?

Response: The responsibility for completing RRA forms rests with the landholders, not with farm managers, district staff, or any other person. If a landholder does not submit RRA forms, the land in question is not eligible to receive irrigation water, and the district may not deliver irrigation water to the landholding.

Comment: Districts are not equipped to find water users who do not have project water allotments. If Reclamation insists that such landholders must report, they must provide districts with methods to locate such individuals. Maybe a one time certification for such landholders should be developed.

Response: If no irrigation water from a Federal project is delivered to a landholder, then there is no problem if the landholder does not submit a form. However, if the landholder is interested in receiving irrigation water on land within the district, then all required forms must be submitted by the landholder before the land would be eligible to receive such water. In that way, the burden is actually on the landholder to submit forms. However, the district is responsible for ensuring that landholders who do not submit RRA forms do not receive Federal project water.

Section 426.18(d)

Comment: This rulemaking should be used to require landholders to provide information on where water is being delivered. Thus, information on water spreading could be obtained.

Response: The RRA forms do require landholders to identify all land on which irrigation water is received.

Section 426.18(e)

Comment: The Federal Government should collect the RRA forms, not the district.

Response: Generally districts have the contractual relationship with and control the delivery of water to landholders. Therefore, it is appropriate for districts to collect the RRA forms. The Federal Government does not have a direct relationship with water users. In addition, the RRA specifically requires that landholders submit forms to Districts.

Section 426.18(g)

Comment: Several commenters believed that the proposed multiple thresholds for RRA forms submittal significantly complicates the system rather than simplifying it. Some of the commenters further stated that there is no policy or legal basis for treating prior law recipients differently than qualified recipients.

Response: Reclamation has reduced the number of RRA thresholds to three in the final rules. All landholders will have a 40-acre threshold unless they are a qualified recipient. If the landholder is a qualified recipient in a Category 1 district, the threshold is set at 240 acres westwide in the final rules. A qualified recipient in a Category 2 district is provided with an 80-acre westwide threshold. As for the basis for treating prior law recipients differently from qualified recipients, that is established by the acreage limitation provisions in that qualified recipients have 960-acre entitlements, while prior law recipients have 160-acre entitlements. The threshold is set at 25 percent of the maximum acreage entitlement to assure Reclamation that it will be able to verify eligibility. Category 2 districts have a lower threshold in order to encourage those districts to confirm their contracts and to ensure compliance with the requirements of the RRA.

Comment: The threshold incentive should be at least double the Category 2 threshold and that should be fixed, not ''up to.''

Response: Reclamation has incorporated this comment in the final regulations. The final regulations provide for a forms threshold for qualified recipients that is 200 percent higher in a Category 1 district than in a Category 2 district and 500 percent higher than the 40-acre threshold applicable to qualified recipients in the prior regulations.

Comment: Reducing the RRA forms threshold for limited recipients to 5 acres could substantially increase the amount of paperwork that districts have to process. The provision should be changed back to 40 acres.

Response: This comment has been accommodated in the final regulations.

Comment: Many commenters provided various suggestions on the general forms threshold. The suggestions included that the forms threshold should be raised to, for example, 80 acres, 160 acres, 240 acres, 260 acres, 320 acres, 640 acres, 960 acres, or as high as possible. Other commenters believed that the forms threshold should be retained at 40 acres. In addition, some commenters felt the form threshold should be simply set with no strings attached. On the other hand, some commenters believed that no forms threshold was authorized by the Congress and that enforcement of the acreage limitation provisions is effectively being repealed through the existence of any forms threshold. They believed that annual reporting is a reasonable requirement for all landholders.

Response: Reclamation does not believe that increasing the exemption threshold would decrease compliance with the RRA. The final rule will raise the threshold at most to 25 percent of a qualified recipient's ownership entitlement. Reclamation has experienced high compliance rates from prior law recipients who are presently exempted from having to submit forms if they hold less than 25 percent of their maximum ownership entitlement (40 acres is 25 percent of a prior law recipient entitlement of 160 acres). In addition, raising the threshold for qualified recipients should allow Reclamation to shift its enforcement resources from reviewing the paperwork of many small operations to ensuring compliance by larger operations.

Reclamation is tasked with ensuring that the acreage limitations are administered and complied with on a westwide basis. Reclamation would not be meeting its responsibilities if Reclamation provided prior law recipients with a 320-acre forms threshold, for example, or all recipients with a 960-acre threshold. With regard to limited recipients, Reclamation acknowledges that a 40-acre threshold will allow some limited recipients to receive irrigation water without paying

the required full-cost rate. Reclamation does not want to further exacerbate this problem by raising the current threshold for limited recipients.

Districts that elect to conform to the discretionary provisions and that are not delinquent on their financial obligations will receive a higher threshold for their qualified recipients than districts that remain under prior law or do not pay their bills in a timely manner. This provision is intended to encourage districts to conform to the discretionary provisions and to pay their bills. In the long term such actions will reduce RRA program costs for districts, landholders, and Reclamation.

Comment: If an individual has less than 40 acres of land that receives project water, but the individual also owns additional acreage that has been classified as irrigable, but has no allotment of project water, is this landholder required to file the certification forms?

Response: Yes, unless the individual is a qualified recipient, in which case the forms threshold is 240 acres in a Category 1 district or 80 acres in a Category 2 district. All irrigable land and irrigation land is considered in determining if a forms threshold has been exceeded requiring the landholder to submit RRA forms. The only exception is if the land in question is held indirectly and was involuntarily acquired. In addition, if the landholder receives no irrigation water on land westwide, Reclamation will take no action to require the submittal of forms, until such time as that landholder wants to receive irrigation water. At that time, the landholder is required to provide all required forms to ensure no excess land was sold without price approval. Accordingly, it may be in the best interest of the landholder to submit forms annually.

Section 426.18(h)

Comment: There is no support in the RRA for Category 1 and 2 districts.

Response: To make the system administratively efficient, the RRA forms threshold concept was incorporated in the first set of Acreage Limitation Rules and Regulations. Reclamation has the discretion to establish a forms threshold that will ensure enforcement of, and compliance with, the acreage limitation provisions while reducing the administrative burden where possible. The categories of districts are intended to assist Reclamation at ensuring compliance with its statutory requirements.

Comment: Any changes with respect to encouraging districts by regulation to adopt the discretionary provision of the RRA are not appropriate.

Response: It is up to the district, its board members, and its membership to decide whether to conform to the discretionary provisions. Reclamation is not prohibited from encouraging such actions.

Comment: Several commenters wondered what the partnership agreement concept had to do with ensuring acreage limitation compliance through a forms requirement? Conversely, other commenters thought the partnership with Reclamation concept was a good idea.

Response: The concept of Reclamation and districts entering into partnership for water resource management is a forward looking initiative. However, upon reanalysis, Reclamation has chosen not to include this concept as a requirement in order to obtain increased RRA forms thresholds.

Section 426.18(k)

Comment: It is a burden for landholders to have to report landholding changes in 15 or 30 days.

Response: Reclamation has provided additional time for reporting landholding changes. The final rules change the verbal notification requirement from 15 days to 30 days. The requirement to submit new forms when a landholding change occurs before the landholder has finished receiving irrigation water for the water year was changed from 30 days to 60 days.

Section 426.18(m)

Comment: The requirement to submit RRA forms by January 1 is not logical. Lands are often leased in March and April, since planting is done as late as June. Reporting by January 1 would cause a lot of paperwork to be done and redone, thereby increasing the paperwork burden.

Response: The requirement for RRA form submittal is that RRA forms must be submitted before irrigation water is delivered. This requirement is not tied to a specific date.

Comment: Why is a landholder who did not file in previous years not able to receive water until the missing forms have been filed? What if the landholder did not receive any water, was under the forms threshold, etc.?

Response: Until the required forms are on file, Reclamation does not know if the land in question is excess, and therefore, not eligible to receive water, if the full-cost rate is applicable, etc. If the landholder did not exceed a forms threshold, then there are no missing forms.

Section 426.18(o)

Comment: Districts should be allowed to draft their own tabulation forms for summary forms.

Response: Reclamation must obtain approval from the Office of Management and Budget (OMB) for the RRA forms. This precludes Reclamation's ability to allow districts to draft their own tabulation sheets. In addition, Reclamation requires consistency in how data is provided to facilitate use of that data.

Section 426.19 District Responsibilities

Section 426.19 of the prior regulation, *Water conservation,* has been moved to 43 CFR part 427. The new § 426.19, *District responsibilities,* replaces, in part, § 426.10 of the prior regulation.

This new section is added to clarify the role of irrigation contracting entities in RRA administration and enforcement. Because this issue has caused some confusion and controversy in the past, it is considered desirable to establish district responsibilities in these final regulations.

The changes to provisions of this section that were included in § 426.10 of the prior rules are not substantive. Some existing Reclamation policy not contained in the prior rules, however, is included. The section is included to help prevent future misunderstandings about districts' roles in RRA administration.

The acreage limitation responsibilities include the requirements that districts: (a) Provide information to landholders; (b) provide Reclamation records as requested; (c) be responsible to Reclamation for acreage limitation charges and to collect such from the appropriate landholders if possible; (d) distribute, collect, and review the RRA forms; (e) file and retain the RRA forms as specified; (f) comply with the requirements of the Privacy Act of 1974; (g) complete and submit to Reclamation summary forms; (h) withhold deliveries of irrigation water to ineligible landholders; and (i) return to Reclamation all revenues received from delivering water to ineligible land.

The final version includes one substantive change. With regard to the revenues received for illegal deliveries of irrigation water, districts will be allowed in these final rules to retain that portion of such revenues that are attributable to any district charges assessed to cover district operation, maintenance, and administrative expenses arising from such deliveries.

The following examples illustrate the application of § 426.19:

Example (1). Landholder A submitted to District X a standard certification form in 1988, then filed verification forms each year through 1993. He then filed a new certification form in March 1994. District X must retain Landholder A's 1988 certification form through 1998; thereafter, it may be destroyed by the district.

Example (2). Same facts as Example 1, except that in October 1995 a Reclamation audit team requests that Landholder A's 1988 certification form be retained until January 2001. The district must retain the form until that date.

Example (3). Landholder B submitted to District X a standard certification form in 1985, and has submitted verification forms each year thereafter. District X must retain Landholder B's 1985 certification form as long as he continues to verify each year and, if he submits a new standard certification form, for 6 years from the date the last verification form of the 1985 standard certification form was submitted.

Example (4). District Y delivers 2,000 acre-feet of irrigation water to Farmer C in 1996 at the contract rate of $10 per acre-foot. It is subsequently found that Farmer C used 100 acre-feet of that water to irrigate ineligible excess land. Therefore, the payments made by District Y to the United States for the water used to irrigate the excess land ($1,000), and any further billings that result from this illegal delivery, other than for the district's operation, maintenance, and administrative expenses, must be deposited into the Reclamation fund or to the United States Treasury, as applicable, and not credited toward any obligation of District Y to the United States.

Comments Concerning § 426.19—District Responsibilities

General

Comment: Districts should not have to be policing entities. Districts do not have the funds to administer the regulations.

Response: In general, districts agree in their contracts that the delivery of irrigation water is subject to Federal reclamation law. Districts have working relationships with the landholders and control the delivery of irrigation water. Therefore, districts must take on the responsibility of ensuring the land is eligible to receive such water.

Section 426.19(b)

Comment: Reclamation should ask landholders directly if additional information is required, rather than asking districts to collect the information.

Response: Because of the contractual relationship between Reclamation and districts, Reclamation initially works with districts to gather information.

Section 426.19(c)

Comment: Any provision that would transfer uncollected individual assessments under the RRA to a district obligation should be deleted.

Response: Reclamation's contract is with the district and the district must collect monies due Reclamation. When a landholder submits a form that indicates irrigation water will be delivered to full-cost land, Reclamation suggests that the district collect the full-cost charges before such water is delivered. To do otherwise places the district at risk if the landholder should not be available to pay the bill after the water is delivered.

Comment: Which district is responsible for full-cost charges if the landholder holds land in more than one district?

Response: In such cases, the bills would be issued to the district(s) where the full-cost land is held. If the landholder's RRA forms indicate full-cost land is held in multiple districts, the bills would be issued accordingly.

Section 426.19(e)

Comment: The 3-year retention period for RRA forms should not be increased to 6 years.

Response: This comment has not been accommodated in the final regulations. Reclamation has considered this comment and determined that for statute of limitations purposes the RRA forms retention requirement should be increased to 6 years.

Section 426.19(i)

Comment: This section should be clarified so that it does not apply to revenues received by the district to cover district operations, maintenance, and administrative expenses.

Response: This comment has been accommodated in the final regulations.

Section 426.20 Assessment of Administrative Costs

Section 426.20 of the prior regulation, *Public participation,* is renumbered as § 426.22. The new § 426.20, *Assessment of administrative costs,* replaces § 426.24 of the prior regulation. This section addresses when and how Reclamation will assess administrative costs.

The only substantive change from the prior regulation is the addition of irrigation of ineligible excess land as a violation subject to assessment of an administrative fee. This provision is provided as part of paragraph (a), which also provides for the assessment of the fee for deliveries to land without the landholder filing an RRA form with the district. No significant changes were made between the proposed and final version of this section. It should be noted that § 426.12(h) requires the application of the compensation rate for the delivery of water to ineligible excess land.

Paragraph (b) provides for the assessment of the administrative costs if corrections are not made to RRA forms within 60-calendar days of Reclamation's written request for such corrections.

Paragraph (c) states that the districts are responsible for payment to Reclamation of the administrative costs, while paragraph (d) provides that administrative costs received by Reclamation will be deposited to the general fund of the United States Treasury.

Finally, paragraph (e) sets the initial amount of the administrative fee at $260, and discusses when Reclamation will review the data to determine if adjustments to this amount are needed and notify the public. Reclamation bases any changes to the assessment amount on Reclamation's costs for: field observation; information analysis; communication with district representatives and landholders regarding possible cases of irrigation of ineligible excess land, or obtaining missing or corrected forms; assistance to landholders in completing certification or reporting forms for the period of time they were not in compliance with the form requirements; performance of onsite visits to determine if irrigation water deliveries have been terminated to landholders that failed to submit the required forms or that irrigated ineligible excess land; and performance of other activities necessary to address form and excess land violations.

The following examples illustrate the application of § 426.20:

Example (1). ABC Corporation holds irrigable land in District Y and in District Z and has three shareholders (Farmers A, B, and C). In both 1996 and 1997, ABC Corporation and each shareholder filed certification forms prior to receiving irrigation water in these districts. However, in each year, Reclamation found several errors on the forms the three shareholders had submitted in each district. The districts were given 60-calendar days in which to have the forms corrected and returned to Reclamation. All the corrected forms were returned by the designated due date, except for Farmer C's. Districts Y and Z will each be assessed a fee of $520 ($260 for each of the 1996 and 1997 water years) because Farmer C's forms were not corrected and returned within the specified time period.

Example (2). Farmer X owns 560 acres and leases 400 acres in District A. Each year, Farmer X submitted certification forms to the district prior to receipt of irrigation water. However, Reclamation found that in 1996

and 1997, Farmer X had reported all of his owned land on his form but only 150 of his 400 leased acres. Reclamation determines that this omission of information is not an attempt to defraud the Federal Government. Accordingly, the district will be required to obtain a corrected form, and if this is not accomplished in 60-calendar days, it will be assessed a fee of $520 ($260 for 1996, and $260 for 1997.)

Example (3). Farmer X and spouse, who are prior law recipients, own 480 acres in District A. None of the 160 acres in excess of the couple's 320-acre ownership entitlement was under recordable contract, as set forth in § 426.12, or otherwise eligible to receive irrigation water. However, Reclamation found that irrigation water had been delivered to the 160 excess acres in both 1998 and 1999. For the irrigation water delivered in these 2 years, District A will be assessed the compensation rate as set forth in § 426.12(h). An additional fee of $520 will also be assessed to the district ($260 each for 1998 and 1999).

Comments Concerning § 426.20—Assessment of Administrative Costs

General

Comment: Several commenters supported the assessment of administrative fees in place of the compensation rate to address RRA forms problems.

Response: Reclamation believes the assessment provides an equitable method for addressing RRA forms problems, while recovering costs incurred to address such problems.

Comment: Reclamation does not have the authority to impose penalties or fines in the guise of assessments for administrative costs without specific direction from Congress.

Response: Reclamation is authorized to promulgate regulations and to collect all data necessary to carry out the mission of Reclamation. 43 U.S.C. 373; 43 U.S.C. 390ww(c); 31 U.S.C. 9701.

Reclamation determines eligibility to receive water, in large part, based on the information provided on RRA certification and reporting forms. Section 426.18(m) of these final regulations require that failure by landholders to submit the required certification or reporting form(s) will result in loss of eligibility to receive water.

In issuing § 426.20 of the Acreage Limitation Rules and Regulations, Reclamation has properly exercised its authority to promulgate regulations for ensuring the delivery of irrigation water only to eligible landholders. The fee is intended to improve compliance with RRA certification requirements and ensure that irrigation water is delivered only to those landholders eligible under the RRA by recovering certain administrative costs Reclamation incurs due to noncompliance with RRA forms requirements and deliveries of irrigation water to ineligible excess land. Reclamation, as a Federal agency, also may impose remedial measures. The $260 charge provided for in this rule is remedial in nature rather than punitive.

In addition, Reclamation possesses authority to ''* * * prescribe regulations establishing the charge for a service or thing of value provided by the agency.'' 31 U.S.C. 9701. As discussed above, under reclamation law, any landholder who received irrigation water prior to submitting the requisite RRA forms failed to meet the criteria which Congress established for eligibility. When Reclamation becomes aware of the violation and undertakes a variety of additional activities to obtain the forms and the necessary information or terminate the delivery of irrigation water on ineligible excess land, Reclamation is helping that landholder establish eligibility for receiving the ''service or thing of value''—irrigation water. These additional activities are valuable services Reclamation provides districts and landholders who would otherwise not be in compliance with applicable Federal laws, regulations, and contracts.

Comment: Reclamation's assessment of administrative costs should be the sole penalty for a violation of the certification and reporting requirements.

Response: The assessment of administrative fees is not a penalty. The fee recovers the costs incurred by Reclamation to correct forms violations in administering the RRA forms requirements. Reclamation reserves the right to terminate the delivery of irrigation water if Reclamation cannot determine the eligibility of landholders to receive such water because of noncompliance with the RRA forms requirements.

Comment: The proposed rule apparently treats all certification and reporting violations equally. The final rules should consider the relative severity of a particular violation. Otherwise, simple typographical errors will be treated identically to the failure to file a form at all.

Response: Section 426.20(b), includes a 60-calendar day grace period in which RRA forms may be corrected without imposition of administrative costs. This differs significantly from § 426.20(a), where addresses the nonsubmittal of RRA forms. No grace period is provided for failure to file RRA forms.

Comment: Some commenters stated that administrative costs should be assessed prospectively only and should not be applied to certification or reporting violations which occurred prior to the formal adoption of the rule. Other commenters proposed that the administrative fee should be applied to previous compensation bills issued for forms violations.

Response: The administrative cost provision will be applied prospectively from the date each provision first becomes effective. With regard to forms violations, it will be applied as of March 27, 1995, the date the administrative fee provision first became effective.

With regard to the delivery of irrigation water to ineligible excess land, it will not be applied to any such deliveries that occurred prior to the effective date of these regulations.

Comment: Will both the district and landholder be assessed the administrative fee for the same violations? It would be unreasonable to assess the fee to both.

Response: The administrative fee will be assessed only once for each violation.

Section 426.20(a)

Comment: Reclamation should clearly state that it will assess the compensation rate only in instances of irrigation water being delivered to ineligible excess land.

Response: Reclamation will not self-impose limits on the use of the compensation rate. The compensation rate will not be used to address noncompliance with RRA forms requirements. However, it may be used to address deliveries to other ineligible land in addition to ineligible excess land.

Section 426.20(b)

Comment: No fines should be assessed for errors.

Response: The assessment of administrative costs is not a fine. Rather, Reclamation is collecting the average cost associated with correcting forms problems. If there were no problems associated with the submittal of RRA forms, Reclamation would not have to incur these additional costs. In addition, Reclamation provides 60-calendar days to correct forms without the assessment of the administrative fee. Thus, the districts and landholders have a great deal of control over whether the $260 administrative fee will be applied.

Section 426.20(c)

Comment: The proposed rule is defective in that it requires the collection of administrative costs from the district rather than from the landholder.

Response: Reclamation's contract is with the district. The districts are also responsible for collecting RRA forms. Districts are not to deliver water to land

for which an RRA form has not been filed or to land that is ineligible excess land. The districts can minimize any assessment of administrative costs by reviewing RRA forms upon submittal to ensure they have been completed correctly. In addition, 60 calendar days are provided to obtain forms corrections. Again, districts can minimize any assessment of administrative costs by having the RRA forms corrected in a timely manner.

Section 426.20(e)

Comment: The administrative fee amount is based on an arbitrary number.

Response: The $260 assessment is based on the average costs Reclamation incurred to address RRA forms violations in 1991, 1992, and 1993. The same type of costs were incurred during those years to address instances of irrigation water being delivered to ineligible excess land.

Comment: The administrative fee is based on costs associated with the audits of landholders.

Response: This is incorrect. However, if a forms problem is discovered during the audit of a landholder, the costs associated with correcting that problem have been and will be considered in determining the average costs associated with correcting forms problems. The same is true with respect to addressing the delivery of irrigation water to ineligible excess land.

Section 426.21 Interest on Underpayments

Section 426.21 of prior regulation, *Small reclamation projects*, is renumbered as § 426.17. The new § 426.21, *Interest on underpayments*, replaces § 426.23 of the prior regulation. This section discusses application of underpayment interest as required by Section 224(i) of the RRA, as amended (43 U.S.C. 390ww).

As in the proposed rule, a definition of underpayment is included as paragraph (a). Other editorial changes from the prior regulation have been made for clarity and organization. No significant changes were made between the proposed and final rule.

Paragraph (b) discusses how interest accrues on underpayments and provides that Reclamation will collect the underpayment with interest from the appropriate district. Paragraph (c) specifies how the underpayment interest rate is determined.

Comments Concerning § 426.21—Interest on Underpayments

Section 426.21(b)

Comment: Requiring the district to pay the underpayment exceeds Reclamation's authority under the law.

Response: Reclamation contracts with districts and the contracts include the requirement to administer and comply with the acreage limitation provisions. These provisions include paying Reclamation for water delivered. If the district delivers water that is subject to application of the full-cost or compensation rates, then the district is responsible for promptly collecting those rates from the landholders and for promptly remitting those funds to Reclamation.

Comment: Will both the district and landholder be assessed the underpayment interest for the same violation? It would be unreasonable to assess the interest to both.

Response: Underpayment interest will be assessed only once.

Section 426.22 Public Participation

Section 426.22 of the prior regulation, *Decisions and appeals*, is renamed *Reclamation decisions and appeals* and renumbered as § 426.24. The new § 426.22, *Public participation*, replaces § 426.20 of the prior regulation. This section addresses the opportunities Reclamation will provide the public to become involved in pending contract actions.

The only substantive change between the prior rules and the proposed rules is in paragraph (8) of the prior rule. This paragraph is replaced by paragraph (b) of this final regulation and deletes reference to a *60-day* public comment period. The prior provision reduces Reclamation's flexibility to base the comment period on specific circumstances and is not a statutory requirement. No significant changes were made between the proposed and final version of this section.

Paragraph (a) provides the general methods Reclamation will use to notify the public about pending contract actions, which includes a requirement to provide such 60-calendar days prior to contract execution. Paragraph (b) provides the steps Reclamation will use to notify the public about any modification to a proposed contract. Paragraph (c) specifies what information Reclamation will include in published announcements concerning contract actions.

Paragraph (d) specifies that anyone may obtain copies of proposed contracts and from where, while paragraph (e) provides the opportunities for public participation. Paragraph (f) specifies which individuals are authorized to negotiate the terms of contract proposals.

Finally, paragraph (g) specifies how Reclamation will use comments submitted during the comment period or made at hearings.

Comments Concerning § 426.22—Public Participation

No comments were received concerning this section.

Section 426.23 Recovery of Operation and Maintenance (O&M) Costs

Section 426.23 of the prior regulation, *Interest on underpayments*, is renumbered as § 426.21. The new § 426.23, *Recovery of operation and maintenance (O&M) costs*, replaces § 426.8 of the prior regulation. This section addresses when districts, and in some cases individual landholders, will be required to pay all O&M costs, if they are not paying such currently.

This section has been rewritten for clarity. The proposed and final language contains no significant changes to prior regulations.

Paragraph (a) provides a general statement that all new, renewed, or amended contracts will provide for payment of O&M costs as specified in this section.

Paragraph (b) states that a district must pay all of the O&M costs that Reclamation allocates to irrigation if a district executes a new or renewed contract after the enactment date of the RRA. For a district that had a contract in existence on the date of enactment of the RRA and then amends that contract to conform to the discretionary provisions, paragraph (c) provides that the district must pay all of the O&M costs allocated to irrigation. This paragraph goes on to discuss other aspects of what will be part of the district's contract rate after the contract amendment. Paragraph (d) provides the same information for a district that amends a contract to provide supplemental or additional benefits.

Paragraph (e) discusses the amount of O&M a district pays under a contract that was in place on the enactment date of the RRA and has not been amended.

Paragraph (f) states that an irrevocable elector must pay his or her proportionate share of all O&M costs allocated to the district for irrigation and provides details on the application. Finally, paragraph (g) explains that if a prior law landholder is subject to full-cost pricing, then all O&M costs must be factored into any full-cost assessment and submitted to the United States by the district.

The following examples illustrate the application of § 426.23:

Example (1). A district amends its water service contract to conform to the discretionary provisions. Prior to its amendment, the water service contract obligated the district to pay a fixed rate of $3.50 per acre-foot of water for the remaining 10 years of its 30-year contract term. At the time of contract amendment, $3.00 of the contract rate are needed to pay current O&M costs. If the district's O&M costs increase by $0.50 per acre-foot from $3.00 to $3.50 per acre-foot in the year after the district's amendment, then the current $3.50 rate will be adjusted to $4.00 to reflect the $0.50 increase in O&M costs. If the district's O&M costs increase by $0.25 per acre-foot the following year, the district's rate would be $4.25 per acre-foot. Similar adjustments to O&M costs would continue throughout the remaining term of the district's contract. One effect of these adjustments is that, subsequent to amendment and continuing throughout the remaining contract term, the district's annual payments will be $0.50 per acre-foot higher than its actual O&M costs.

Example (2). A district amends its water service contract to conform to the discretionary provision. Prior to its amendment, the district's contract obligated it to pay a rate of $3.00 per acre-foot of water for the remaining 10 years of its 30-year contract. At the time of the contract amendment, the district's actual O&M costs are $6.50 per acre-foot. Since the current contract rate of $3.00 does not cover these O&M costs, the district's rate will be increased to $6.50. If the district's O&M costs increase by $.50 per acre-foot the following year, the district's rate would then be adjusted to $7.00 per acre-foot.

Example (3). A district's repayment contract obligates it to pay $4.00 per acre for the remaining 5 years of its 40-year contract. It is also obligated under the terms of its contract to pay the full O&M costs due the United States on an annual basis in addition to its repayment obligation. If the district were to amend its contract to conform to the discretionary provisions, no change in its present repayment arrangement with the United States would be necessary since under the terms of its contract is it already paying its full O&M costs on an annual basis.

Comments Concerning § 426.23—Recovery of Operation and Maintenance (O&M) Costs

Section 426.23(c)

Comment: It was congressional intent that farmers pay the full cost of service, including capital, full O&M, and interest on O&M deficits, as soon as possible. The rules should require such when a district amends its contract to conform to the discretionary provisions.

Response: Section 208(a) of the RRA states that when a district is subject to the discretionary provisions, the price of water will be at least sufficient to recover all O&M costs that the district is obligated to pay the United States. Section 208(b) of the RRA requires Reclamation to adjust the contract rate for discretionary provision districts annually to reflect any changes to O&M costs. Section 208(c) of the RRA states that the other two sections do not apply to districts which operate and maintain project facilities and finance such operations from non-Federal funds.

While Reclamation has the authority in Section 208 to charge more than the O&M rate, with one option being the cost of service rate, Reclamation is not required to do so. Reclamation prefers to review each district individually to determine the repayment capability. Reclamation will charge the cost of service rate where appropriate. To provide a higher rate in these regulations than is statutorily required would limit Reclamation's flexibility to address differences between districts.

Section 426.24 Reclamation Decisions and Appeals

Section 426.24 of the prior regulation, *Assessment of administrative costs*, is renumbered as § 426.20. The new § 426.24, *Reclamation decisions and appeals*, replaces § 426.22 of the prior regulation. This section provides the right to appeal RRA final determinations made by regional directors, and specifies the process to be used.

The proposed rules made significant changes to the final determination and appeals processes for RRA decisions. The proposed rules were prepared in response to Reclamation charging the compensation rate to districts for delivering irrigation water to landholders without an RRA form on file, and the resulting difficulties Reclamation was experiencing due to the volume of appeals. With the advent of the administrative fee provision, Reclamation believes the appeals process found in the prior rules would be more appropriate, and Reclamation has included that version in these final rules with changes for clarity and organization and a few significant adjustments.

Paragraph (a) discusses who will make final RRA determinations for Reclamation. A significant change is that the regional director's decision will not take effect during the period in which an appeal to the Commissioner may be filed (i.e., 30 days). If an adversely affected party files a petition for a stay, the regional director's decision will not take effect until either the Commissioner acts on the petition or the Commissioner does not take action within 30 days after receiving the petition.

In addition, the regulations clarify that if the final determination involves more than one region, the Commissioner will decide who makes the final determination. Because the final rule provides that decisions will not go into effect until adversely affected parties have had an opportunity to appeal, the shortened filing period ensures expedited implementation while allowing petitioners reasonable time to file an appeal.

Paragraph (b) provides the general appeal rights concerning RRA final determinations and the effect of a final determination during an appeal. The final rule also reduces from 60 days to 30 days the time in which an adversely affected party may file a notice of appeal and reduces from 90 days to 60 days the time to submit documents in support of the appeal. Similar to paragraph (a), the shortened filing period coupled with the delayed effective date of the regional director's decision ensures that Reclamation can make and implement timely decisions.

Paragraph (c) provides that the rules governing the procedures of the Ad Hoc Board of Appeals of the Office of Hearings and Appeals apply to appeals from the Commissioner's decision.

Paragraph (d) discusses the effective date of an appealed decision and states the compensation rate may be applicable if irrigation water is delivered to land found to be ineligible. Paragraph (e) provides for the accrual of underpayment interest, if applicable, while an appeal is pending.

Paragraph (f) addresses what happens to appeals made prior to the effective date of these regulations by stating pending appeals will be processed under the rules in effect prior to these final regulations.

Paragraph (g) provides the addresses for requests for appeals, stays, etc. Unlike the prior rules where regional addresses were included, which often lead to confusion as to where to send an appeal, this list only includes the address for the Commissioner and the Office of Hearings and Appeals.

Comments Concerning § 426.24—Reclamation Decisions and Appeals

General

Comment: The proposed revisions would create too much paperwork and other activities for $260 forms bills. The cost of protesting a forms bill may exceed the bill itself.

Response: Reclamation has decided not to implement the proposed appeals regulations. The prior appeals process as modified by these final rules is expected to efficiently manage disputes arising under these rules. The process is not expected to generate more

paperwork, and an appeal from a regional director's decision is expected to be completed in less time than under the prior rules. If in the future further changes to the appeals section are warranted, Reclamation will initiate a special rulemaking activity to address those changes.

Comment: The appeals section is long and confusing. As written the ability of the Agency head to determine if field offices are making the correct decisions is removed.

Response: See the response to the preceding comment. The appeals process under the final rules is substantially similar to prior rule provisions, although certain time periods have been shortened. The Commissioner, under the final rules, retains authority to correct decisions of the regional directors.

Comment: The changes to this section improve the appeals process because the authority will be with the regional director and not with the politicians.

Response: Although Reclamation is not retaining the proposed version of the appeals provisions, all final RRA determinations have been and will remain with the regional director. The appeals section only specifies a process that may be used if a party disagrees with that final determination.

Comment: The rule should provide some specific time periods for response by Reclamation to appeals so that appellants know when the process may be considered completed, even in the absence of a response.

Response: This comment has been accommodated with respect to stays in the final regulations. Variable workloads and resources make imposition of a specific time period for other petitions unwise. Reclamation will contact appellants to inform them that appeals have been received and when the Commissioner's decision has been made. Alternatively, the appellants may contact Reclamation to determine the status of their appeals.

Comment: It is assumed the appeals section does not affect the waiver of sovereign immunity.

Response: That is a correct assumption.

Section 426.24(b)

Comment: Stays should be a matter of right, not at the discretion of the regional director. In addition, stays should be through the entire process, including any action brought to Federal Court.

Response: If an appellant shows good cause for granting a stay, the request for stay is submitted in a timely manner, and the harm to the petitioner outweighs the interest to Reclamation, then the Commissioner will stay the decision of the regional director. Thus, for example Reclamation would not grant a blanket approval to deliver irrigation water to ineligible land simply because a party appeals a decision to terminate such water deliveries.

Section 426.24(f)

Comment: Any pending appeals should be decided under the proposed regulations.

Response: This comment has not been accommodated in the final regulations. Any changes between the prior rules and the final rules will be applied prospectively.

Section 426.25 Reclamation Audits

Section 426.25 of the prior regulation, *Severability*, is renumbered as § 426.26. The new § 426.25, *Reclamation audits*, replaces § 426.10(i) of the prior regulation.

This section states that Reclamation will conduct reviews of district administration and enforcement of the RRA and these regulations, and landholder compliance. The prior rules discussed field audits that would be conducted. The proposed and final rule simply include the names of the activities associated with Reclamation's RRA field audits. The final rule changes the phrase ''has the authority to conduct'' to ''will conduct'' to reflect the intent of the statutory requirement and the wording in the prior rule.

Comments Concerning § 426.25—Reclamation Audits

Comment: Reclamation should retain the language of the prior rules that states Reclamation will conduct field audits, rather than the proposed language that states Reclamation is authorized to conduct field audits.

Response: This section has been revised to state that Reclamation will conduct reviews of districts and landholders.

Comment: Field audits would be welcome to determine if perceived violations or abuses of the law or regulations do actually exist. To the extent that audits disclose violations, appropriate action should be taken.

Response: Reclamation has and will continue the RRA Program Evaluation effort, which includes the review of districts' administration and enforcement of the acreage limitation provisions and landholders' compliance with those provisions. This section specifies the three major components of the RRA Program Evaluation effort.

Comment: Reclamation should not unnecessarily investigate and harass farmers as a result of the rules. Probing into structures of family farm operations is unnecessary if most of the irrigators are under the 960-acre limit.

Response: Reclamation's audit activities are limited for landholders who do not exceed acreage limitation entitlements. However, Reclamation must ensure all entitlements are enforced, not just the 960-acre limitations applicable to qualified recipients.

Section 426.26 Severability

The new § 426.26, *Severability*, replaces § 426.25 of the prior regulations. This section simply states that if any provision of these regulations or the application of such is held invalid, the sections of the rules or their applications that are not held invalid will not be affected.

The final language contains no substantive changes to proposed or prior rules.

Comments Concerning § 426.26—Severability

No comments were received concerning this section.

Part 427 (Water Conservation)—Summary of Changes; Public Comments and Responses

The RRA requires those who contract for Federal project water supplies to develop water conservation plans and challenges both Reclamation and the districts to evaluate water management strategies and implement appropriate water conservation measures. A thoughtfully developed water conservation plan represents an opportunity for every district to identify water management problems, evaluate opportunities, highlight accomplishments, and plan for improvements.

Water conservation rules implementing Section 210 of the RRA were previously part of the Rules and Regulations for Projects Governed by Federal Reclamation Law found in Part 426 (43 CFR 426.19). As part of this rulemaking, the water conservation rules have been removed from part 426 and placed in a new part 427. Reclamation intends no changes to the prior water conservation rule. However, Reclamation remains committed to actively encouraging and facilitating water conservation planning and implementation by water districts and landholders.

Reclamation intends to encourage and assist districts in the development of quality water conservation plans, the demonstration of innovative conservation technologies, and the

implementation of effective water efficiency measures. As part of this effort, Reclamation will prepare advisory guidance that will contain recommendations for a sound water conservation planning process. Reclamation also recognizes the importance of cooperation and coordination with other State and Federal water conservation programs.

The following comments were received on the proposed rules and were considered in developing these final rules.

Authorities

Comments: A variety of comments were received regarding Reclamation's authorities to implement certain aspects of the proposed water conservation rules. Concern was expressed that the proposed rules would attempt to expand on the authorities provided by law. It was suggested that Reclamation should document prior authorities and seek additional legislative authority where such authority is lacking. Authorities were questioned in the following specific areas:

- Approval of water conservation plans,
- Withholding discretionary benefits, and
- Modifying signed contracts

Response: The final rules do not alter the prior rules. Reclamation has reviewed its authorities with Interior's Office of the Solicitor. The Office of the Solicitor agrees that Reclamation has authority to implement the provisions contained in both the proposed rules and the final rules.

Incorporation by Reference

Comments: Comments suggested that the proposed rules, by incorporating the Guidelines and Criteria, are in violation of the Administrative Procedure Act.

Response: There is an established Federal Register process including specific language, for incorporation of materials by reference. Reclamation did not use this process or language because the proposed rules did not incorporate the draft Guidelines and Criteria by reference. However, there was a definite link between the rules and draft Guidelines and Criteria, because the rules proposed to use the Guidelines and Criteria as the standard upon which Reclamation would base its approval of water conservation plans. The final rules do not include a provision for Reclamation plan approval. Advisory guidance will be contained in independent advisory documents and is not incorporated by reference into the final rules as regulatory requirements.

Approval Process

Comments: Comments regarding the water conservation plan approval process described in the proposed rules focused on the following issues and concerns:

- Triggering of NEPA compliance requirements.
- Public and tribal review of plans.
- Lack of penalties on Reclamation for delaying approval.
- Insufficient Reclamation resources to accomplish reviews and approval.

Response: The proposed provision that Reclamation would approve water conservation plans is not included in the final rules. Reclamation will continue to make available its expertise and guidance, as resources permit, to encourage and assist districts in the development and implementation of effective water conservation plans. Although Reclamation will not approve plans, Reclamation will in the future appropriately address Federal responsibilities under NEPA, ESA and Native American trust responsibilities where major Federal actions may be involved regarding site specific implementation of plan measures. For example, Reclamation will comply with NEPA as appropriate, when undertaking future site specific Federal actions, such as financial assistance for implementation of a specific conservation measure related to this rulemaking. Native American trust responsibility will also be addressed.

Applicability

Comments: Concerns were expressed regarding who should prepare water conservation plans. Comments indicated that the proposed rules should not apply to these groups:

- Indian tribes.
- Contractors for water for municipal and industrial purposes.
- Paid-out districts.
- Users where only a fraction of the total supply is Reclamation project water.
- Irrigation districts as opposed to irrigation projects.
- Canal companies.
- Small entities as defined in the Regulatory Flexibility Act (populations less than 50,000 versus 3,300 in the proposed rule).

Response: Section 426.16(f) has been revised to clarify Indian tribes and tribal entities operating on tribal trust or restricted lands need not prepare water conservation plans. These tribal entities or others operating on trust lands are typically subject to BIA regulations which protect the resource. The RRA requires plans of each district that ''has entered into a repayment contract or water service contract pursuant to Federal reclamation law or the Water Supply Act of 1958, as amended.'' This includes irrigation districts, canal companies, and municipal and industrial contractors receiving water from a Reclamation project. No additional exclusions are provided in the final rules; however, Reclamation will maintain present policy that excludes districts with contracts that are not developed pursuant to Federal reclamation law, small and temporary contractors and districts already complying with comparable State or other comparable Federal water conservation programs.

Comment: If a tribe wishes to sell or lease water to a district which is not exempt under § 427.2(a), would that district be required to have an approved water conservation plan in accordance with the regulations before Reclamation facilitates the purchase or lease?

Response: The district would be required to prepare a water conservation plan in accordance with provisions contained in the final regulations. Reclamation could consider a district's compliance with the regulations before facilitating a purchase or lease of water; however, nothing in the regulations requires that to occur. Section 426.16(f) contains an exception from the preparation of water conservation plans for Indian tribes and tribal entities operating on tribal trust or restricted lands; however, this exception does not extend to districts purchasing or leasing water from a tribe.

Definitions

Comment: Regarding the definition of a district, commenters stated that the RRA defines the term ''district'' to be limited to those entities which have entered into contract with the Secretary for irrigation water. The proposed rules define ''districts'' to include anyone that has entered into a contract with the United States pursuant to Reclamation law (with a few exceptions). The rules have expanded on the RRA definition to include municipal and industrial (M&I) water users.

Response: The RRA defines the term ''district'' as any individual or any legal entity established under State law which has entered into a contract *or is eligible to contract with the Secretary* for irrigation water. If a project is authorized to provide irrigation water, then a water district, including a district that currently supplies only municipal and industrial water, is eligible to contract for irrigation water unless it is prevented from doing so by another State or Federal statute. The intent of

Congress to require municipal and industrial water districts to prepare water conservation plans is substantiated by the reference to the Water Supply Act of 1958 in Section 210(b) of the RRA.

Comment: One commenter stated that ''the language of the RRA refers only to entities that are parties to water supply contracts or repayment contracts. It does not require our irrigation ditch company to prepare water conservation plans.''

Response: This comment and letter refers to a contract between the irrigation ditch company and Reclamation for the sale of land and replacement of storage space. This type of contract does not fall within the definition of contract given in the RRA.

Exemptions

Comments: Commenters indicated that entities subject to additional specific State laws or Federal project authorizations with water conservation requirements should also be exempted from the rules. Entities subject to the Arizona's Groundwater Management Act and those within the Central Arizona Project and the Central Utah Project were mentioned. At least one commenter also indicated that there should be specific methodology identified in the rules for an entity to qualify for an exemption.

Response: Specific exemptions such as these are not listed in the final rules. However, Reclamation's policy is to treat compliance with such comparable water conservation requirements of the Central Utah Project or Arizona Groundwater Act or comparable laws as satisfying the requirements of this regulation. Reclamation recognizes the importance of coordination with other State and Federal water conservation programs. Reclamation will describe compliance with comparable State or Federal water conservation through policy statements.

Limited District Influence

Comments: Concern was expressed that some districts' ability to implement the requirements of the proposed rules would be limited because the district has no authority to require compliance by water users within the district.

Response: In situations such as this, Reclamation would expect a district to develop a conservation plan that focuses on those elements within the district's control, including ways to encourage water users to undertake water conservation measures. In addition, many water service and repayment contracts contain assignment clauses which would allow requirements of a contractor to be assigned to a subcontractor.

Burdensome Nature

Comments: Respondents expressed concern about what they view as the burdensome nature of the proposed rules. Some indicated that water conservation plans and measures would be a serious financial burden on some districts. Some indicated that the burden would result in time being spent by the districts on administrative exercises and law suits, rather than on water conservation. Others indicated that some Districts are already conserving water and that plans would be unnecessary.

Response: The purpose of the Water Conservation Rules is to implement Section 210 of the RRA. Section 210 requires districts to prepare water conservation plans. The final rules neither include a provision for Reclamation to approve plans, nor do they contain requirements for specific conservation measures. Districts which are already conserving water will have the opportunity to identify such activities in their water conservation plans. Reclamation will assist districts in their water conservation planning efforts to facilitate improved water conservation planning.

Economic Feasibility

Comments: Comments addressing the area of economic feasibility indicated that Section 210 of the RRA requires that water conservation measures should be economically feasible. The point was made that the costs of measures should not outweigh the value of the water conserved.

Response: The RRA includes the provision that the Secretary should encourage prudent and responsible water conservation measures, where such measures are shown to be economically feasible. The final rules do not alter this provision. The final rules fully allow a district to examine the economic feasibility of water conservation objectives or a particular measure as part of its conservation planning process.

Increase Requirements

Comments: Some commenters expressed the view that the proposed rules should go further in requiring water conservation activities. It was suggested that the proposed rules should, in addition, include minimum performance standards. The view was also expressed that the rules should allow consideration of all water resources, including groundwater.

Response: The RRA requires districts to develop water conservation plans that address goals, economically feasible objectives, appropriate measures and a time schedule. It also requires Reclamation to encourage prudent and responsible water conservation measures on Federal projects. The final rules do not alter these provisions, but rather adopts an approach that evaluates opportunities for water conservation site-specifically through effective water management planning. This approach recognizes the widely ranging economic, social, institutional and environmental circumstances confronting districts westwide. Reclamation will actively encourage and assist districts, as resources permit, in the development and implementation of effective plans through the provision of advisory guidance and technical assistance.

Plan Updates

Comments: Concerns were expressed regarding the requirement for plan updates every 5 years. Alternative periods of 10 and 15 years were suggested. It was also suggested that there should be an end to the update process, once several updates had been provided.

Response: Effective water management and conservation planning is an ongoing process. Water conservation plans should be revisited and updated on a regular basis to assure the continuing relevancy of goals, objectives, measures and time schedules identified. The final rules do not specify an update schedule. However, Reclamation will maintain present policy that calls for 5-year updates of plans by districts.

Incentives

Comments: Some comments on the incentive provisions in the proposed rules indicated that discretionary benefits should not be tied to compliance with water conservation plan requirements. Some used terms as ''punitive'' or ''blackmail'' to characterize such provisions. Other commenters indicated that sanctions such as monetary penalties or withholding of water deliveries should be imposed for noncompliance.

Response: The final rules do not contain a provision that ties discretionary benefits to compliance with the water conservation rules. Reclamation will make its expertise and guidance available to districts regarding the development and implementation of effective water conservation plans. Reclamation will direct its available resources to support cooperative efforts

that address water management problems and opportunities.

Environmental Compliance

Comments: The environmental compliance discussion in the preamble to the proposed rules generated considerable concerns. Most commenters opposed the requirement that water conservation plans would be subject to review under the NEPA. Some felt that it was the responsibility of the Federal Government, and would be an economic hardship on irrigation districts. It was pointed out that the requirement for NEPA compliance would be triggered by the Federal action of approving water conservation plans. At least one commenter supported the view that environmental compliance should be addressed at the individual water conservation plan development stage with a public participation process included.

Response: Reclamation has not included a provision for the approval of plans in the final rule. NEPA compliance would no longer be triggered by plan preparation since the Federal action of ''approval'' has been removed. Reclamation will comply with NEPA as appropriate, when undertaking any future site specific Federal actions, such as financial assistance for implementation of a specific conservation measure related to this rulemaking. Reclamation anticipates that the resources which would have been devoted to environmental reviews can be better used for improved water conservation plan and implementation.

Federal Versus State and Local Jurisdictions

Comments: Concern was expressed that the proposed rules are an intrusion into State authorities for managing water. It was indicated that States rather than the Federal Government should provide oversight for water conservation planning. Some also expressed the view that districts should have authority to make final decisions in water conservation planning.

Response: With respect to the appropriation and distribution of water, Reclamation is subject to State water law and has a responsibility to see that its project water is used efficiently and in a manner consistent with State law. Opportunities exist for State/Federal cooperation in achieving efficient water use. It is Reclamation's intent to coordinate fully with State conservation programs and to allow compliance with comparable State conservation programs to serve as compliance with the rules. In addition, districts make final decisions through the plan preparation process, subject to State and Federal law, regarding the development and implementation of water conservation measures.

Comment: Executive Order No. 12612 requires Federal agencies undertaking policies with federalism implications, whenever possible, to ''defer to the States to establish standards.'' Respondents communicated that prior State and district programs are already requiring and accomplishing water conservation. Concern was expressed that the proposed rules would duplicate such programs.

Response: Reclamation recognizes that some States have established conservation standards or programs that meet the goals and intent of the water conservation requirements of the RRA. Through policy, Reclamation intends to recognize compliance with comparable State or Federal water conservation requirements as fulfilling the intent of Section 210 of the RRA.

Critical Practice—Water Measurement

Comments: Commenters offered views regarding the water measurement provision in the proposed rules. The predominant view expressed was that meters on each turnout would be an unreasonable and unnecessary expense. It was further expressed that developing quantitative inventories of nonproject water sources is unnecessary. Some commenters expressed support for volumetric measurement at each agricultural turnout or service connection and indicated that Reclamation should require a minimum accuracy in accounting for water use and conservation. The view was also expressed that minimum measurement requirements should include documentation of amounts of water used on specific parcels of land. At lease one commenter suggested that the rules list water measurement devices which are acceptable. Questions were also asked regarding Reclamation's intent with respect to the following:

- Would M&I suppliers need to meter at each household or only at the wholesale connection for raw water deliveries?
- What does proven accuracy mean?
- Do agricultural districts include M&I conservation practices as part of their water conservation plans when they wholesale untreated water to M&I suppliers?

Response: The final rules do not require a district to include any specific water measurement and accounting system as a required conservation measure in the district's water conservation plan. Reclamation will provide advisory guidance on the recommended content of water conservation plans, and will continue to promote the importance of water measurement and accounting as a fundamental measure that all districts should evaluate in developing their conservation programs. This approach will allow a district more flexibility in evaluating its existing water measurement and accounting system and in developing and implementing an effective water measurement and accounting system appropriate to the particular district.

Critical Practice—Water Pricing

Comments: Commenters expressed concern about the water pricing provision in the proposed rules. Some indicated that tiered pricing could lead to an increase in consumption of groundwater, and would especially be a problem in States with aggressive programs to shift from reliance on groundwater. The view was also expressed that the water pricing provisions would be in violation of laws or contracts in some instances. Some indicated that pricing decisions should be made on a local level since issues vary greatly from area to area.

Other commenters favored the pricing provisions and suggested that the rules should require districts to consider a conservation rate structure to encourage water conservation. Other supporters indicated that charges should reflect the full cost of supplying water and that the rules should mandate tiered pricing. Some stated that water pricing structures designed to increase efficiency of use are acceptable as long as they do not include tiered pricing.

Response: The final rules do not require a district to include incentive pricing or any specific water pricing structure as a required conservation measure in the district's water conservation plan. Reclamation will provide advisory guidance on the recommended content of water conservation plans, and will continue to promote the importance of water pricing as a fundamental measure that all districts should evaluate in developing their conservation programs. This will allow a district more flexibility in evaluating its existing pricing structure and in developing and implementing an effective water pricing structure appropriate to the particular district and its customers. This approach will also ensure that water pricing is consistent with contract provisions and applicable State laws.

Critical Practice—Educational Programs

Comments: Commenters stated that Reclamation should provide assistance

in education and that the assistance program should apply directly to local water management circumstances.

Response: The final rules do not require a district to include an educational program as a required conservation measure in the district's water conservation plan. Through policy, Reclamation will provide advisory guidance on the recommended content of water conservation plans, and will continue to promote the importance of an education program as a fundamental measure that all districts should evaluate in developing their conservation programs. This will allow a district more flexibility in evaluating its existing educational activities and in developing and implementing an effective water conservation education program appropriate to the particular district and its customers.

Critical Practice—Conservation Coordinator

Comments: Commenters offered the view that a requirement for each district to appoint a water conservation coordinator would have an adverse financial impact on smaller districts.

Response: The final rules do not require a district to identify a water conservation coordinator in the district's water conservation plan. However, Reclamation encourages each district to identify a water conservation coordinator who is responsible for development and implementation of the district's conservation plan.

Use of Conserved Water

Comments: Commenters offered views concerning the use of conserved water. Some indicated that decisions on the use of conserved water should remain with each district or with the State. Some also indicated that the use of conserved water is restricted by certain State laws. The view was offered that conserved water should belong to the district and landowners. Some commenters were concerned that conserved water would flow out of a basin rather than being made available for recharging local groundwater or satisfying local M&I demands.

Support was expressed for Reclamation's facilitation of water transfers between willing parties. Support was expressed by some for the making of conserved water available to fish and wildlife and the environment. Some indicated that Reclamation should encourage and facilitate the transfer of conserved water for fish and wildlife and other environmental needs where allowed under State law. Others indicated that Reclamation should require transfers for such purposes.

Response: Reclamation supports the view that decisions on the use of conserved water in a specific situation are subject to State law, contract requirements, and conditions of the water right, as well as a variety of other site-specific factors. Reclamation will actively encourage and facilitate individual water transfers of Reclamation-supplied conserved water between willing parties as appropriate. Reclamation will also work closely with States, other Federal agencies, tribal entities, local entities, and water users to identify environmental and other current needs for conserved water at the watershed level that may be satisfied by facilitating transfers between willing parties, subject to State law.

Technical Assistance

Comments: Commenters offered views regarding Reclamation's providing of technical assistance in water conservation planning. Some commenters indicated that increased technical and financial support could lessen the burden of preparing water conservation plans. Others suggested that Reclamation sponsor educational meetings on the rules for districts when they are finalized. The view was also offered that Reclamation should assist the States in satisfying EPA water quality regulations. Concern was expressed by some that technical assistance from Reclamation is unlikely due to Reclamation's downsizing. Some even indicated that Reclamation's prices for technical assistance are inflated and personnel have a lack of expertise.

Response: Reclamation will make available, as resources permit, its expertise and guidance to encourage and assist districts in the development and implementation of effective water conservation plans. Reclamation will provide technical and financial assistance through an incentive-based field services program, in cooperation with States, to the extent resources are available.

Consultation With Indian Tribes

Comments: At least three commenters expressed concerns about consultation with Indian tribes. One comment indicated that tribes were not identified as being involved in the NEPA process addressed in the proposed rules. Another expressed concern that Reclamation is not adhering to the intent of Secretarial Order 3175.

Response: It is Reclamation's intent to engage Indian tribes in the NEPA process for future site-specific Federal actions related to conservation, whenever the tribes are identified as affected parties and to ensure that any anticipated effects on Indian trust resources are explicitly addressed. Reclamation intends to fulfill its tribal trust obligations, including protecting tribal trust resources whenever undertaking future Federal actions related to this rulemaking.

Environmental Compliance

The environmental impact statement (EIS) and related coordination activities described below provide full environmental compliance for the promulgation of these final rules and regulations. Reclamation will comply with NEPA and other environmental statutes as appropriate, prior to undertaking any future site-specific Federal actions related to this rulemaking.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (NEPA), an EIS has been prepared which analyzes the impacts of these proposed rules and regulations and alternatives thereto. The EIS provides a complete assessment of the impacts of promulgating and implementing the rules and regulations. The EIS includes a no action alternative, a proposed rule alternative, a preferred alternative, and three additional alternatives. A notice of availability of the final EIS was published in the Federal Register (60 FR 4677, Feb. 7, 1996), and the final EIS was distributed to interested parties. The final EIS contains a list of seven programmatic environmental commitments that complement the preferred alternative. A formal Record of Decision on the final EIS, generally naming the preferred alternative, was signed by the Assistant Secretary '' Water and Science on December 10, 1996.

Fish and Wildlife Coordination Act

In meetings and correspondence between Reclamation and the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and State wildlife agencies, it was agreed that a formal Fish and Wildlife Coordination Act (FWCA) report would not be required for this rulemaking. As part of coordination efforts, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and State wildlife agencies provided technical assistance to Reclamation, which has been appropriately documented. If additional Federal actions are taken pursuant to these rules and regulations, FWCA coordination and formal reports will be accomplished, as appropriate to the future actions.

Endangered Species Act

Section 7 of the Endangered Species Act (ESA) establishes the interagency cooperation program under which Federal agencies have their primary compliance responsibilities. Reclamation, the U.S. Fish and Wildlife Service (FWS), and the U.S. National Marine Fisheries Service (NMFS) conducted a review under section 7(a)(1) of the ESA of the potential effects of this rulemaking. The FWS and NMFS concurred by separate letter that the action as proposed is not likely to adversely affect listed or proposed species, or designated or proposed critical habitats. Reclamation requested a list of federally proposed or listed threatened, endangered, and candidate species from the FWS and NMFS, and prepared information required to conduct a programmatic review under section 7(a)(1). The FWS and NMFS provided guidance on how these proposed rules could be used to afford overall conservation for listed species. Reclamation will consult and/or confer as specified in sections 7(a)(2) and 7(a)(4) with appropriate FWS and NMFS office prior to undertaking future site-specific Federal actions related to the implementation of this rulemaking, as appropriate, that ''may affect'' proposed or listed species or their proposed or designated critical habitat. As part of its obligations under the ESA, Reclamation intends to provide internal policy guidance to its area managers on section 7 and section 10 ESA procedures, and to assist districts in complying with section 10 procedures where required.

National Historic Preservation Act

Informal consultation was conducted with the Advisory Council on Historic Preservation to apprise them of this rulemaking. The draft EIS was sent to the Council and the 17 Western State Historic Preservation Offices for official comment. For future Federal actions taken pursuant to these rules that trigger compliance under the National Historic Preservation Act, procedures prescribed in 36 CFR 800 will be followed.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order (E.O.) 12866, (58 FR 51735, Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. E.O. 12866 defines a ''significant regulatory action'' as a regulatory action meeting any 1 of 4 criteria specified in the Executive Order. This rulemaking is considered a significant regulatory action under criterion number 4, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that a regulatory flexibility analysis, describing the impact of regulations on small entities be prepared and published if the regulations will have a significant economic effect on a substantial number of small entities. The final rules generally reduce the economic burden on small entities by increasing the RRA forms threshold and modifying other provisions such as the application of the RRA to religious and charitable organizations. Other major provisions of the rules, such as leasing, trusts, and preparation of water conservation plans remain substantively unchanged. None of these provisions will have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

Acreage Limitation Rules and Regulations

Sections 206, 224(c), and 228 of the RRA (43 U.S.C. 390ff, 390ww(c), and 390zz) require, among other things, that (1) as a condition to the receipt of Reclamation irrigation water, each landholder must certify, in a form suitable to the Secretary, that they are in compliance with the provisions of the Act, and (2) districts must annually submit to Reclamation, in a form suitable to the Secretary, records and information necessary to implement the RRA. These mandatory requirements are addressed in § 426.18. To comply with these requirements, Reclamation provides forms for the landholders' and districts' use. The landholder forms have been approved by the OMB under control number 10006–0005. The district summary forms have been approved under control number 10006–0006. Both clearances expire on August 31, 1999.

The final rules contain a change, which will become effective on January 1, 1997, that will reduce the reporting burden by raising the acreage threshold for which RRA forms are required. Reclamation estimates that the reporting burden will be reduced by 3,300 hours by increasing the RRA forms threshold for qualified recipients. All districts subject to the acreage limitation provisions will be notified of their new RRA forms threshold for qualified recipients shortly after the publication of these final rules in the Federal Register.

Reclamation will initiate a full public process to revise its RRA forms to implement other changes to the Acreage Limitation Rules and Regulations that will become effective on January 1, 1998. This process will start early in 1997 and be completed in time to make such changes to the RRA forms for the 1998 water year.

Water Conservation Rules and Regulations

Section 210(b) of the RRA (43 U.S.C. 390jj(b)) requires that each district that has entered into a repayment contract or water service contract pursuant to Federal reclamation law or the Water Supply Act of 1958, as amended, develop a water conservation plan that includes specific features. Section 427.1(b) of the Water Conservation Rules and Regulations require that such plans be submitted to Reclamation.

In accordance with the Paperwork Reduction Act of 1995, Reclamation is announcing its intention to require the preparation of water conservation plans and the submittal of those plans to Reclamation for review. The respondents to this information collection will be all districts that meet the statutory requirement to prepare water conservation plans. However, it is estimated that several districts may be exempted from the requirement to prepare water conservation plans based principally on size of the district or through meeting the requirements of other State or Federal programs. Overall, no less than an estimated 340 districts would actually be required to prepare water conservation plans and submit them to Reclamation. It should be noted that water conservation plans have been a requirement of the RRA since 1982. Accordingly, the initial water conservation plan development work for most districts has already been accomplished and future efforts will be in updating the district plan every 5 years.

Executive Order 12612, Federalism

These final rules modify prior provisions for administering the RRA. The rules do not significantly change the relationship or relative roles of the Federal and State Government. They do not lead to Federal control over traditional State responsibilities, or decrease the ability of the States to make policy decisions with respect to their own functions. These rules do not affect the distribution of power and responsibilities among the various levels of government and do not preempt State law. In summary, these

rules do not have a significant impact on Federalism as described by E.O. 12612.

Executive Order 12630, Takings

These rules do not result in imposition of undue additional fiscal burdens on the public. These rules do not result in physical invasion or occupancy of private property or substantially affect its value or use. Specifically, these rules do not result in the taking of contractual rights to storage water in Reclamation reservoirs or water rights established under State law. In summary, these final rules do not have significant takings implications.

Unfunded Mandates Reform Act of 1995

This statute directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, when those actions may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any 1 year. These final rules will not result in the expenditure of $100,000,000 as described by this statute. These rules do not constitute an unfunded mandate within the meaning of the Unfunded Mandates Reform Act of 1995.

Authorship: These final regulations were written by RRA and water conservation staff under the administrative direction of the Director, Program Analysis Office, Denver, Colorado; and the policy direction of the Director, Office of Policy and External Affairs, Washington D.C.

List of Subjects in 43 CFR Parts 426 and 427

Administrative practice and procedure, Irrigation, Reclamation, Reporting and record keeping requirements.

Dated December 11, 1996.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons set forth in the preamble, 43 CFR chapter I is amended as follows:

Amendments Effective January 1, 1998

1. Part 426 is revised to read as follows:

PART 426—ACREAGE LIMITATION RULES AND REGULATIONS

Sec.

426.1 Purpose.
426.2 Definitions.
426.3 Conformance to the discretionary provisions.
426.4 Attribution of land.
426.5 Ownership entitlement.
426.6 Leasing and full-cost pricing.
426.7 Trusts.
426.8 Nonresident aliens and foreign entities.
426.9 Religious or charitable organizations.
426.10 Public entities.
426.11 Class 1 equivalency.
426.12 Excess land.
426.13 Excess land appraisals.
426.14 Involuntary acquisition of land.
426.15 Commingling.
426.16 Exemptions and exclusions.
426.17 Small reclamation projects.
426.18 Landholder information requirements.
426.19 District responsibilities.
426.20 Assessment of administrative costs.
426.21 Interest on underpayments.
426.22 Public participation.
426.23 Recovery of operation and maintenance (O&M) costs.
426.24 Reclamation decisions and appeals.
426.25 Reclamation audits.
426.26 Severability.

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z–11; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390aa to 390zz–1, 43 U.S.C. 418, 43 U.S.C. 423 to 425b, 43 U.S.C. 431, 434, 440, 43 U.S.C. 451 to 451k, 43 U.S.C. 462, 43 U.S.C. 485 to 485k, 43 U.S.C. 491 to 505, 43 U.S.C. 511 to 513, and 43 U.S.C. 544.

§ 426.1 Purpose.

These rules and regulations implement certain provisions of Federal reclamation law that address the ownership and leasing of land on Federal Reclamation irrigation projects and the pricing of Federal Reclamation project irrigation water, and establish terms and conditions for the delivery of Federal Reclamation project irrigation water.

§ 426.2 Definitions.

As used in these rules:

Acreage limitation entitlements mean the ownership and nonfull-cost entitlements.

Acreage limitation provisions mean the ownership limitations and pricing restrictions specified in Federal reclamation law, including but not limited to, Sections 203(b), 204, and 205 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

Acreage limitation status means whether a landholder is a qualified recipient, limited recipient, or prior law recipient.

Commissioner means the Commissioner of the Bureau of Reclamation, U.S. Department of the Interior.

Compensation rate means a water rate applied, in certain situations, to water delivery to ineligible land that is not discovered until after the delivery has taken place. The compensation rate is equal to the established full-cost rate that would apply to the landholder if the landholder was to receive irrigation water on land that exceeded a nonfull-cost entitlement.

Contract means any repayment or water service contract or agreement between the United States and a district providing for the payment to the United States of construction charges and normal operation, maintenance, and replacement costs under Federal reclamation law, even if the contract does not specifically identify the portion of the payment that is to be attributed to operation and maintenance and that portion that is to be attributed to construction. This definition includes contracts made in accordance with the Distribution System Loans Act, as amended (43 U.S.C. 421).

Contract rate means the assessment, as set forth in a contract, that is to be paid by a district to the United States, and recomputed if necessary on a per acre or per acre foot basis.

Dependent means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152) and any subsequent amendments.

Direct when used in connection with the terms landholder, landowner, lessee, lessor, or owner, means that the party is the owner of record or holder of title, or the lessee of a land parcel, as appropriate. However, landholdings of joint tenants and tenants-in-common will not be considered direct under these regulations.

Discretionary provisions refer to Sections 390cc through 390hh, except for 390cc(b), of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

District means any individual or any legal entity established under State law that has entered into a contract or can potentially enter into a contract with the United States for irrigation water service through federally developed or improved water storage and/or distribution facilities.

Eligible, except where otherwise provided, means permitted to receive an irrigation water supply from a Reclamation project under applicable Federal reclamation law.

Entity, see definition of *legal entity*.

Excess land means nonexempt land that is in excess of a landowner's maximum ownership entitlement under the applicable provisions of Federal reclamation law.

Exempt, except where otherwise provided, means not subject to the acreage limitation provisions.

Extended recordable contract means a recordable contract whose term was extended due to moratoriums

established in 1976 and 1977 on the sale of excess land.

Full cost or *full-cost rate* means an annual rate established by Reclamation that amortizes the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded operation and maintenance deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. The full-cost rate includes actual operation, maintenance, and replacement costs required under Federal reclamation law.

Full-cost charge means the full-cost rate less the actual operation, maintenance, and replacement costs required under Federal reclamation law.

Indirect, when used in connection with the terms landholder, landowner, lessee, lessor or owner, means that such party is not the owner of record or holder of title, or the lessee of a land parcel, but that such party has a beneficial interest in the legal entity that is the owner of record or holder of title, or the lessee of a land parcel. Landholdings of joint tenants and tenants-in-common will be considered indirect under these regulations. A security interest held by lenders, who are not otherwise considered a landholder of the land in question, in a legal entity or in a land parcel will not be considered an indirect interest or a beneficial interest for purposes of these regulations.

Individual means any natural person, including his or her spouse, and including other dependents; provided that, under prior law, the term individual does not include a natural person's spouse or dependents.

Ineligible, except where otherwise provided, means not permitted to receive an irrigation water supply under applicable Federal reclamation law regardless of the rate paid for such water.

Intermediate entity means an entity that is a part owner of another entity and in turn is owned by others, either another entity or individuals.

Involuntary acquisition means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

Irrevocable election means the execution of the legal instrument that a landholder subject to prior law provisions submits to become subject to the discretionary provisions of Federal reclamation law.

Irrevocable elector means a landholder who makes an irrevocable election to conform to the discretionary provisions of Federal reclamation law.

Irrigable land means land so classified by Reclamation under a specific project plan for which irrigation water is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided or are planned to be provided.

Irrigation land means any land receiving water from a Reclamation project facility for irrigation purposes in a given water year, except for land that has been specifically exempted by statute or administrative action from the acreage limitation provisions of Federal reclamation law.

Irrigation water means water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with Reclamation.

Landholder means a party that directly or indirectly owns or leases nonexempt land.

Landholding means the total acreage of nonexempt land directly or indirectly owned or leased by a landholder.

Lease means any arrangement between a landholder (the lessor) and another party (the lessee) under which the economic risk and the use or possession of the lessor's land is partially or wholly transferred to the lessee. If a management arrangement or consulting agreement is one in which the manager or consultant performs a service for the landholder for a fee, but does not assume the economic risk in the farming operation, and the landholder retains the right to the use and possession of the land, is responsible for payment of the operating expenses, and is entitled to receive the profits from the farming operation, then the agreement or arrangement will not be considered to be a lease.

Legal entity or entity for the purpose of establishing application of the acreage limitation entitlements means, but is not limited to, corporations, partnerships, organizations, and any business or property ownership arrangements such as joint tenancies and tenancies-in-common. For purposes of the information requirements specified in § 426.18 only, trusts will be considered to be legal entities.

Limited recipient means any legal entity established under State or Federal law benefiting more than 25 natural persons. In order to become limited recipients, legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

Nondiscretionary provisions means sections 390cc(b) and 390ii through 390zz–1 of the RRA.

Nonexempt land means either irrigation land or irrigable land that is subject to the acreage limitation provisions. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by the landowner, are included in the nonexempt acreage. Areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feedlots, equipment storage yards, permanent roads, permanent ponds, and similar facilities, together with roads open for unrestricted use by the public are excluded from nonexempt acreage.

Nonfull-cost entitlement means the maximum acreage a landholder may irrigate with irrigation water at a nonfull-cost rate.

Nonfull-cost rate means any water rate other than the full-cost rate. Nonfull-cost rates are paid for irrigation water made available to land in a landholder's nonfull-cost entitlement.

Nonproject water means water from sources other than Reclamation project facilities.

Nonresident alien means any natural person who is neither a citizen nor a resident alien of the United States.

Operation and maintenance costs or *O&M costs* mean all direct charges and overhead costs incurred by the United States after the date that Reclamation has declared a project, or a part thereof, substantially complete to operate, maintain, provide replacements of, administer, manage, and oversee project facilities and lands.

Ownership entitlement means the maximum acreage a landholder may directly or indirectly own and irrigate with irrigation water.

Part owner means an individual or legal entity that has a beneficial interest in a legal entity, but does not own 100 percent of that legal entity. A lender, who is not otherwise considered a landholder of the land in question, with a security interest in a legal entity or land owned by a legal entity shall not be considered a part owner under these regulations.

Prior law means the Reclamation Act of 1902, and acts amendatory and supplementary thereto (43 U.S.C. 371 *et seq.*) that were in effect prior to the enactment of the RRA, and as amended by the RRA.

Prior law recipient means an individual or legal entity that has not become subject to the discretionary provisions.

Project means any irrigation project authorized by Federal reclamation law, or constructed by the United States pursuant to such law, or in connection with a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the United States through Reclamation for the reclamation of lands. The term project includes any incidental features of an irrigation project.

Public entity means States, political subdivisions or agencies thereof, and agencies of the Federal Government.

Qualified recipient means an individual who is a citizen or a resident alien of the United States or any legal entity established under State or Federal law that benefits 25 natural persons or less. A married couple may become a qualified recipient if either spouse is a United States citizen or resident alien. In order to become qualified recipients, individuals and legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

Reclamation means the Bureau of Reclamation, U.S. Department of the Interior.

Reclamation fund means a special fund established by the Congress under the Reclamation Act of 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues.

Recordable contract means a written contract between Reclamation and a landowner capable of being recorded under State law, providing for the disposition of land held by that landowner in excess of the ownership limitations of Federal reclamation law.

Resident alien means any natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may be amended.

RRA means the Reclamation Reform Act of 1982, Public Law 97–293, Title II, 96 Stat. 1263, (43 U.S.C. 390aa *et seq.*) as amended.

Secretary means Secretary of the U.S. Department of the Interior.

Standard certification or reporting forms mean forms on which landholders provide complete information about the directly and indirectly owned and leased nonexempt lands in their landholdings.

Water year means a 365-day period (or 366 days during leap years) whose start date is specified within a contract between Reclamation and the district or through some other agreement between Reclamation and the district.

Westwide means the 17 Western States where Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

§ 426.3 Conformance to the discretionary provisions.

(a) *Districts that are subject to the discretionary provisions.* Unless an exemption in § 426.16 applies, a district is subject to the discretionary provisions if:

(1) The district executes a new or renewed contract with Reclamation after October 12, 1982. The discretionary provisions apply as of the execution date of the new or renewed contract;

(2) The district amends its contract to conform to the discretionary provisions:

(i) A district may ask Reclamation to amend its contract to conform to the discretionary provisions;

(ii) The district's request to Reclamation must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, actions required by applicable State law to amend its contract; and

(iii) If the requirements of paragraphs (a)(2)(i) and (ii) of this section are met, then Reclamation will amend the contract, and the district becomes subject to the discretionary provisions from the date the district's request was submitted to Reclamation;

(iv) If the district only wants to amend its contracts to become subject to the discretionary provisions, the amendments need only be to the extent required to conform to the discretionary provisions; or

(3) The district amends its contract after October 12, 1982, to provide the district with additional or supplemental benefits. The amendment must also include the district's conformance to the discretionary provisions:

(i) The discretionary provisions apply as of the date that Reclamation executes the contract amendment;

(ii) For purposes of application of the acreage limitation provisions Reclamation considers a contract amendment as providing additional or supplemental benefits if that amendment:

(A) Requires the United States to expend significant funds;

(B) Requires the United States to commit significant additional water supplies; or

(C) Substantially modifies contract payments due the United States; and

(iii) For purposes of application of the acreage limitation provisions Reclamation does not consider the following contract actions as providing additional or supplemental benefits:

(A) The construction of facilities for conveyance of irrigation water for which districts contracted on or before October 12, 1982;

(B) Minor drainage and construction work contracted under a prior repayment or water service contract;

(C) Operation and maintenance (O&M) amendments;

(D) The deferral of payments provided the deferral is for a period of 12 months or less;

(E) A temporary supply of irrigation water as set forth in § 426.16(d);

(F) The transfer of water on an annual basis from one district to another, provided that:

(*1*) Both districts have contracts with the United States;

(*2*) The rate paid by the district receiving the transferred water:

(*i*) Is the higher of the applicable water rate for either district;

(*ii*) Does not result in any increased operating losses to the United States above those that would have existed in the absence of the transfer; and

(*iii*) Does not result in any decrease in capital repayment to the United States below what would have existed in the absence of the transfer; and

(*3*) The recipients of the transferred water pay a rate for the water that is at least equal to the actual O&M costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water;

(G) Contract actions pursuant to the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506); or

(H) Other contract actions that Reclamation determines do not provide additional or supplemental benefits.

(b) *Districts that are subject to prior law.* Any district which had a contract in force on October 12, 1982, that required landholders to comply with the ownership limitations of Federal reclamation law remains subject to prior law unless and until the district:

(1) Enters into a new or renewed contract requiring it to conform to the discretionary provisions, as provided in paragraph (a)(1) of this section;

(2) Makes a contract action requiring conformance to the discretionary provisions, as provided in paragraphs (a)(2) or (3) of this section; or

(3) Becomes exempt, as provided in § 426.16.

(c) *Standard RRA contract article.* (1) New or renewed contracts executed after October 12, 1982, or contracts that are amended to conform to the discretionary provisions before or on the effective date of these rules must include the following clause:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

(2) New or renewed contracts executed after the effective date of these rules, or contracts that are amended to conform to the discretionary provisions after the effective date of these rules must include the following clause:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to Federal reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

(d) *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions.* If a district provides irrigation water to other districts through subcontracts and the master contracting district is subject to:

(1) The discretionary provisions, then all subcontracting districts who are entitled to receive irrigation water must also conform to the discretionary provisions; or

(2) Prior law, then the subcontracting district can amend its subcontract to conform to the discretionary provisions without subjecting the master contractor or any other subcontractor of the master contractor to the discretionary provisions. If a subcontract that does not include the United States as a party is amended to conform to the discretionary provisions, or the subcontract is a new or renewed contract executed after October 12, 1982, then the amended, new, or renewed subcontract must include the United States as a party.

(e) *The effect on a landholder's status when a district becomes subject to the discretionary provisions.* If a district conforms to the discretionary provisions and the landholder is:

(1) Other than a nonresident alien or a legal entity that is not established under State or Federal law, and is:

(i) A direct landholder in that district, then the landholder becomes subject to the discretionary provisions and the associated acreage limitation status will apply in any district in which the landholder holds land; or

(ii) Only an indirect landholder in that and all other discretionary provisions districts, then the landholder's acreage limitation status is not affected. Such a landholder can receive irrigation water as a prior law recipient on indirectly held lands in districts that conform to the discretionary provisions.

(2) A nonresident alien, or legal entity not established under State or Federal law, and the landholder is:

(i) A direct landholder, then since such a landholder cannot become subject to, and has no eligibility under the discretionary provisions:

(A) All direct landholdings in districts that conform to the discretionary provisions become ineligible; and

(B) Directly held land that becomes ineligible as a result of the district's action to conform to the discretionary provisions may be placed under recordable contract as subject to the conditions specified in § 426.12; or

(ii) An indirect landholder, then such a landholder may receive irrigation water on land indirectly held in districts conforming to the discretionary provisions, with the entitlements for such landholder determined as specified in § 426.8.

(f) *Landholder actions to conform to the discretionary provisions.* (1) In the absence of a district's action to conform to the discretionary provisions, United States citizens, resident aliens, or legal entities established under State or Federal law, can elect to conform to the discretionary provisions by executing an irrevocable election. Upon execution of an irrevocable election:

(i) The elector's entire landholding in all districts shall be subject to the discretionary provisions;

(ii) The election shall be binding on the elector and his or her landholding, but will not be binding on subsequent landholders of that land;

(iii) An irrevocable election by a legal entity is binding only upon that entity and not on the part owners of that entity;

(iv) An irrevocable election by a part owner of a legal entity binds only the part owner making the election and not the entity or other part owners of the entity; and

(v) An irrevocable election by a lessor does not affect the status of a lessee, and vice versa. However, the eligibility and entitlement of neither a lessor nor a lessee may be enhanced through leasing.

(2) A landholder makes an irrevocable election by completing a Reclamation issued irrevocable election form:

(i) The elector's original irrevocable election form must be filed by the district with Reclamation and must be accompanied by a completed certification form, as specified in § 426.18;

(ii) The elector must file copies of the irrevocable election and certification forms concurrently with each district where the elector holds nonexempt land;

(iii) Reclamation will prepare a letter advising the recipient of the approval or disapproval of the election. Reclamation will base approval upon whether the election form and the accompanying certification form(s) indicate the elector's satisfaction of the various requirements of Federal reclamation law and these regulations;

(iv) If the election is approved, the letter of approval, with a copy of the irrevocable election form and the original certification form(s), will be sent by Reclamation to each district where the elector holds land;

(v) The district(s) shall retain the forms; and

(vi) If the irrevocable election is disapproved, the landholder and the district will be advised by letter along with the reasons for disapproval.

(3) A landholder that only holds land indirectly in a district that has conformed to the discretionary provisions, other than a nonresident alien or a legal entity not established under State or Federal law, may make an irrevocable election also by simply submitting certification forms to all districts where the landholder holds land subject to the acreage limitation provisions. An election made in this manner is binding in all districts in which such elector holds land.

(g) *District reliance on irrevocable election form information.* The district is entitled to rely on the information contained in the irrevocable election form. The district does not need to make an independent investigation of the information.

(h) *Time limits for amendments or elections to conform to the discretionary provisions.* Reclamation will allow at anytime a landholder to elect or a district to amend its contract to conform to the discretionary provisions. An irrevocable election that was made after April 12, 1987, but on or before May 13, 1987, shall be considered effective as of April 12, 1987.

§ 426.4 Attribution of land.

(a) *Prohibition on increasing acreage limitation entitlements.* Except as specifically provided in these rules, a landholder cannot increase acreage limitation entitlements or eligibility by

acquiring or holding a beneficial interest in a legal entity. Similarly, the acreage limitation status of an individual or legal entity that holds or has acquired a beneficial interest in another legal entity will not be permitted to enlarge the latter legal entity's acreage limitation entitlements or eligibility.

(b) *Attribution of owned land.* For purposes of determining acreage to be counted against acreage limitation entitlements, acreage will be attributed to all:

(1) Direct landowners in proportion to the direct beneficial interest the landowners own in the land; and

(2) Indirect landowners in proportion to the indirect beneficial interest they own in the land.

(c) *Attribution of leased land.* Leased land will be attributed to the direct and indirect landowners as well as to the direct and indirect lessees in the same manner as described in paragraphs (b) and (d) of this section.

(d) *Attribution of land held through intermediate entities.* If land is held by a direct landholder and a series of indirect landholders, Reclamation will attribute that land to the acreage limitation entitlements of the direct landholder and each indirect landholder in proportion to each landholder's beneficial interest in the entity that directly holds the land.

(e) *Leasebacks.* Any land a landholder directly or indirectly owns and that is directly or indirectly leased back will only count once against that particular landholder's nonfull-cost entitlement.

(f) *Effect on an entity of attribution to part owners.* For purposes of determining eligibility, the entire landholding will be attributed to all the direct and indirect landholders. If the interests in a legal entity are:

(1) Undivided, then all of the indirect part owners must be eligible in order for the entity to be eligible; or

(2) Divided, in such a manner that specific parcels are attributable to each indirect landholder, then the entity may qualify for eligibility on those portions of the landholding not attributable to any part owner who is ineligible.

§ 426.5 Ownership entitlement.

(a) *General.* Except as provided in §§ 426.12 and 426.14, all nonexempt land directly or indirectly owned by a landholder counts against that landholder's ownership entitlement. In addition, land owned or controlled by a public entity that is leased to another party counts against the lessee's ownership entitlement, as specified in § 426.10.

(b) *Qualified recipient ownership entitlement.* A qualified recipient is entitled to receive irrigation water on a maximum of 960 acres of owned nonexempt land, or the Class 1 equivalent thereof. This entitlement applies on a westwide basis.

(c) *Limited recipient ownership entitlement.* A limited recipient is entitled to receive irrigation water on a maximum of 640 acres of owned nonexempt land, or the Class 1 equivalent thereof. This entitlement applies on a westwide basis.

(d) *Prior law recipient ownership entitlement.* (1) Ownership entitlements for prior law recipients are determined by whether the recipient is one individual or a married couple, and for entities by the type of entity, as follows:

(i) An individual subject to prior law is entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land;

(ii) Married couples who hold equal interests are entitled to receive irrigation water on a maximum of 320 acres of jointly owned nonexempt land;

(iii) Surviving spouses until remarriage are entitled to receive irrigation water on that land owned jointly in marriage up to a maximum of 320 acres of owned nonexempt land. If any of that land should be sold, the applicable ownership entitlement would be reduced accordingly, but not to less than 160 acres of owned nonexempt land;

(iv) Children are each entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land, regardless of whether they are independent or dependent;

(v) Joint tenancies and tenancies-in-common subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per tenant, provided each tenant holds an equal interest in the tenancy;

(vi) Partnerships subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per partner if the partners have separable and equal interests in the partnership and the right to alienate that interest. Partnerships where each partner does not have a separable interest and the right to alienate that interest are entitled to receive irrigation water on a maximum of 160 acres of nonexempt land owned by the partnership; and

(vii) All corporations subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land.

(2) Prior law recipient ownership entitlements specified in this section apply on a westwide basis unless the land was acquired by the current owner on or before December 6, 1979. For land acquired by the current owner on or before that date, prior law ownership entitlements apply on a district-by-district basis.

(3) For those entities where an equal interest held by the part owners would result in a 160-acre per part owner entitlement for the entity, if the part owners interests are not equal then the entitlement of the entity will be determined by the relative interest held in the entity by each part owner.

§ 426.6 Leasing and full-cost pricing.

(a) *Conditions that a lease must meet.* Districts can make irrigation water available to leased land only if the lease meets the following requirements. Land that is leased under a lease instrument that does not meet the following requirements will be ineligible to receive irrigation water until the lease agreement is terminated or modified to satisfy these requirements.

(1) The lease is in writing;

(2) The lease includes the effective date and term of the lease, the length of which must be:

(i) 10 years or less, including any exercisable options; however, for perennial crops with an average life longer than 10 years, the term may be equal to the average life of the crop as determined by Reclamation, and

(ii) In no case may the term of a lease exceed 25 years, including any exercisable options;

(3) The lease includes a legal description, that is at least as detailed as what is required on the standard certification and reporting forms, of the land subject to the lease;

(4) Signatures of all parties to the lease are included;

(5) The lease includes the date(s) or conditions when lease payments are due and the amounts or the method of computing the payments due;

(6) The lease is available for Reclamation's inspection and Reclamation reviews and approves all leases for terms longer than 10 years; and

(7) If either the lessor or the lessee is subject to the discretionary provisions, the lease provides for agreed upon payments that reflect the reasonable value of the irrigation water to the productivity of the land; except

(8) Leases in effect as of the effective date of these regulations do not need to meet the criteria specified under paragraphs (a) (3) and (4) of this section, unless and until such leases are renewed.

(b) *Nonfull-cost entitlements.* (1) The nonfull-cost entitlement for qualified recipients is 960 acres, or the Class 1 equivalent thereof.

(2) The nonfull-cost entitlement for limited recipients that received irrigation water on or before October 1, 1981, is 320 acres or the Class 1 equivalent thereof. The nonfull-cost entitlement for limited recipients that did not receive irrigation water on or prior to October 1, 1981, is zero.

(3) The nonfull-cost entitlement for prior law recipients is equal to the recipient's maximum ownership entitlement as set forth in § 426.5(d). However, for the purpose of computing the acreage subject to full cost, all owned and leased irrigation land westwide must be included in the computation.

(c) *Application of the nonfull-cost and full-cost rates.* (1) A landholder may irrigate at the nonfull-cost rate directly and indirectly held acreage equal to his or her nonfull-cost entitlement.

(2) If a landholding exceeds the landholder's nonfull-cost entitlement, the landholder must pay the appropriate full-cost rate for irrigation water delivered to acreage that equals the amount of leased land that exceeds that entitlement.

(3) In the case of limited recipients, a landholder does not have to lease land to exceed a nonfull-cost entitlement, since the nonfull-cost entitlement is less than the ownership entitlement. Therefore, limited recipients must pay the appropriate full-cost rate for irrigation water delivered to any acreage that exceeds their nonfull-cost entitlement.

(d) *Types of lands that count against the nonfull-cost entitlement.* (1) All directly and indirectly owned irrigation land and irrigation land directly or indirectly leased for any period of time during 1-water year counts towards a landholder's nonfull-cost entitlement, except:

(i) Involuntarily acquired land, as provided in §§ 426.12 and 426.14; and

(ii) Land that is leased for incidental grazing or similar purposes during periods when the land is not receiving irrigation water.

(2) Reclamation's process for determining if a nonfull-cost entitlement has been exceeded is as follows:

(i) All land counted toward a landholder's nonfull-cost entitlement will be counted on a cumulative basis during any 1-water year;

(ii) Once a landholder's nonfull-cost entitlement is met in a given water year, any additional eligible land may be irrigated only at the full-cost rate; and

(iii) Irrigation land will be counted towards nonfull-cost entitlements on a westwide basis, even for prior law recipients, regardless of the date of acquisition.

(e) *Selection of nonfull-cost land.* (1) A landholder that has exceeded his or her nonfull-cost entitlement may select in each water year, from his or her directly held irrigation land, the land that can be irrigated at a nonfull-cost rate and the land that can be irrigated only at the full-cost rate. Selections for full-cost or nonfull-cost land may include:

(i) Leased land;

(ii) Nonexcess owned land;

(iii) Land under recordable contract, unless that land is already subject to application of the full-cost rate under an extended recordable contract; or

(iv) A combination of all three.

(2) Once a landholder has received irrigation water on a given land parcel during a water year, the selection of that parcel as full cost or nonfull-cost is binding until the landholder has completed receiving irrigation water westwide for that water year.

(f) *Applicability of a full-cost selection to an owner or lessee.* If a landowner or lessee should select land as subject to full-cost pricing, then that land can receive irrigation water only at the full-cost rate, regardless of eligibility of the other party to receive the irrigation water at the nonfull-cost rate.

(g) *Subleased land.* Land that is subleased (the lessee transfers possession of the land to a sublessee) will be attributed to the landholding of the sublessee and not to the lessee.

(h) *Calculating full-cost charges.* Reclamation will calculate a district's full-cost charge using accepted accounting procedures and under the following conditions.

(1) The full-cost charge does not recover interest retroactively before October 12, 1982. But, interest on the unpaid balance does accrue from October 12, 1982, where the unpaid balance equals the irrigation allocated construction costs for facilities in service plus cumulative federally funded O&M deficits, less payments.

(2) The full-cost charge will be determined:

(i) As of October 12, 1982, for contracts entered into before that date regardless of amendments to conform to the discretionary provisions; and

(ii) At the time of contract execution for new and renewed contracts entered into on or after October 12, 1982.

(3) For repayment contracts, the full-cost charge will fix equal annual payments over the amortization period. For water service contracts, the full-cost charge will fix equal payments per acre-foot of projected water deliveries over the amortization period.

(4) If there are additional construction expenditures, or if the cost allocated to irrigation changes, then a new full-cost charge will be determined.

(5) Reclamation will notify the respective districts of changes in the full-cost charge at the time the district is notified of other payments due the United States.

(6) In determining full-cost charges, the following factors will be considered:

(i) *Amortization period.* The amortization period for calculating the full-cost charge is the remaining balance of:

(A) For contracts entered into before October 12, 1982, the contract repayment period as of October 12, 1982;

(B) For contracts entered into on or after October 12, 1982, the contract repayment period;

(C) For water service contracts, the period from October 12, 1982, or the execution date of the contract, whichever is later, to the anticipated date of project repayment; and

(D) In cases where water services rates are designed to completely repay applicable Federal expenditures in a specific time period, that time period may be used as the amortization period for full-cost calculations related to these expenditures; but, in no case will the amortization period exceed the project payback period authorized by the Congress;

(ii) *Construction costs.* For determining full cost, construction costs properly allocable to irrigation are those Federal project costs for facilities in service that have been assigned to irrigation within the overall allocation of total project construction costs. Total project construction costs include all direct expenditures necessary to install or implement a project, such as:

(A) Planning;

(B) Design;

(C) Land;

(D) Rights-of-way;

(E) Water-rights acquisitions;

(F) Construction expenditures;

(G) Interest during construction; and

(H) When appropriate, transfer costs associated with services provided from other projects;

(iii) *Facilities in service.* Facilities in service are those facilities that are in operation and providing irrigation services;

(iv) *Operation and maintenance (O&M) deficits funded.* O&M deficits funded are the annual O&M costs including project-use pumping power allocated to irrigation that have been federally funded and that have not been paid by the district;

(v) *Payments received.* In calculating the payments that have been received,

all receipts and credits applied to repay or reduce allocated irrigation construction costs in accordance with Federal reclamation law, policy, and applicable contract provisions will be considered. These may include:

(A) Direct repayment contract revenues;

(B) Net water service contract income;

(C) Contributions;

(D) Ad valorem taxes; and

(E) Other miscellaneous revenues and credits excluding power and municipal and industrial (M&I) revenues;

(vi) *Interest rates*. Interest rates to be used in calculating full-cost charges will be determined by the Secretary of the Treasury as follows:

(A) For irrigation water delivered to qualified recipients, limited recipients receiving water on or before October 1, 1981, and extended recordable contract land owned by prior law recipients, the interest rate for expenditures made on or before October 12, 1982, will be the greater of 7.5 percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the fiscal year when the expenditures were made by the United States. The interest rate for expenditures made after October 12, 1982, will be the arithmetic average of:

(*1*) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year when the expenditures are made; and

(*2*) The weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year the expenditures are made;

(B) For irrigation water delivered to limited recipients not receiving irrigation water on or before October 1, 1981, and prior law recipients, except for land owned subject to extended recordable contract, the interest rate will be determined as of the fiscal year preceding the fiscal year the expenditures are made, except that the interest rate for expenditures made before October 12, 1982, will be determined as of October 12, 1982. The interest rate will be based on the arithmetic average of:

(*1*) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance; and

(*2*) The weighted average yield on all interest-bearing marketable issues sold by the Treasury.

(C) Landholders who were prior law recipients and become subject to the discretionary provisions after April 12, 1987, are eligible for the full-cost interest rate specified in paragraph (h)(6)(vi)(A) of this section, unless they are limited recipients that did not receive irrigation water on or before October 1, 1981, in that case they remain subject to the full-cost interest rate specified in paragraph (h)(6)(vi)(B) of this section.

(i) *Direct and proportional charges for full-cost water.* In situations where water delivery charges are contractually or customarily levied on a per-acre basis, full-cost assessments will be made on a per-acre basis. In situations where water delivery charges are contractually or customarily levied on a per acre-foot basis, one of the following methods must be used to make full-cost assessments:

(1) Assessments will be based on the actual amounts of water used in situations where measuring devices are in use, to the satisfaction of Reclamation, to reasonably determine the amounts of irrigation water being delivered to full-cost and nonfull-cost land; or

(2) In situations where, as determined by Reclamation, measuring devices are not a reliable method for determining the amounts of water being delivered to full-cost and nonfull-cost land, then water charges must be based on the assumption that equal amounts of water per acre are being delivered to both types of land during periods when both types of land are actually being irrigated.

(j) *Disposition of revenues obtained through full-cost water pricing.*

(1) *Legal deliveries*. If irrigation water has been delivered in compliance with Federal reclamation law and these regulations, then:

(i) That portion of the full-cost rate that would have been collected if the land had not been subject to full cost will be credited to the annual payments due under the district's contractual obligation;

(ii) Any O&M revenues collected over and above those required under the district's contract will be credited to the project O&M account; and

(iii) The remaining full-cost revenues will be credited to the Reclamation fund unless otherwise provided by law, with any capital component of the full-cost rate credited to project repayment, if applicable.

(2) *Illegal deliveries*. Revenues resulting from the assessment of compensation charges for illegal deliveries of irrigation water will be deposited into the Reclamation fund in their entirety, and will not be credited toward any contractual obligation, or O&M or repayment account of the district or project. For purposes of these regulations only, this does not include revenues from any charges that may be assessed by the district to cover district operation, maintenance, and administrative expenses.

§ 426.7 Trusts.

(a) *Definitions for purposes of this section:*

Grantor revocable trust means a trust that holds irrigable land or irrigation land that may be revoked at the discretion of the grantor(s), or terminated by the terms of the trust, and revocation or termination results in title to the land held in trust reverting either directly or indirectly to the grantor(s).

Irrevocable trust means a trust that holds irrigable land or irrigation land and does not allow any individual, including the grantor or beneficiaries, the discretion to decide when or under what conditions the trust terminates, and that upon termination the title to the land held in trust transfers either directly or indirectly to a person(s) or entity(ies) other than the grantor(s).

Otherwise revocable trust means a trust that holds irrigable land or irrigation land and that may be revoked at the discretion of the grantor(s) or other parties, or terminated by the terms of the trust, and revocation or termination results in the title to the land held in trust transferring either directly or indirectly to a person(s) or entity(ies) other than the grantor(s).

(b) *Attribution of land held by a trust.* The acreage limitation entitlements of a trust are only limited by the acreage limitation entitlements of the trustees, grantors, or beneficiaries to whom land held by the trust must be attributed as provided for in § 426.4. The entitlements of the parties to whom trusted land is attributed are determined according to §§ 426.5, 426.6, and 426.8, and other applicable provisions of Federal reclamation law and these regulations. Reclamation attributes nonexempt land held by a trust to the following parties:

(1) For land held in an *irrevocable trust*, the land is attributed to the beneficiaries in proportion to their beneficial interest in the trust. However, this attribution is only made if the criteria listed in paragraphs (b)(1) (i) and (ii) of this section are met. If the trust fails to meet any portion of these criteria, Reclamation attributes the land held in the trust to the trustee.

(i) The trust is in written form and approved by Reclamation; and

(ii) The beneficiaries of the trust and the beneficiaries' respective interests are identified within the trust document.

(2) For land held in a *grantor revocable trust*, the land is attributed to the grantor according to the grantor's acreage limitation status and the land's eligibility immediately prior to its transfer to the trust. However, this attribution is only made if the criteria listed in paragraphs (b)(2) (i), (ii), (iii), and (iv) of this section are met. If the trust fails to meet any portion of these criteria, the land held in trust will be ineligible to receive irrigation water until all of the criteria are met. The only exception is if the trust's and grantor's standard certification or reporting forms indicate that the land held by the trust has been attributed to the trust's grantor(s).

(i) The trust meets the criteria specified in paragraph (b)(1) of this section;

(ii) The grantor(s) of all land held by the trust is (are) identified within the trust document;

(iii) The conditions under which the trust may be revoked or terminated are identified within the trust document; and

(iv) The recipient(s) of the trust land upon revocation or termination is (are) identified within the trust document.

(3) For land held in an *otherwise revocable trust*, the land is attributed to the beneficiaries in proportion to their beneficial interests in the trust. However, this attribution is only made if the trust meets the criteria specified in paragraph (b)(1) of this section and the trust meets the additional criteria specified in paragraph (b)(2) of this section.

(i) If Reclamation cannot determine who will hold the land in trust upon termination or revocation of the trust, or who is the grantor(s) of the land held in trust, then irrigation water will not be made available to the land held in trust until the trust satisfies the additional criteria listed in paragraph (b)(2) of this section.

(ii) If the trust fails to meet the criteria listed in paragraph (b)(1) of this section, but does meet the additional criteria listed in paragraphs (b)(2) (ii) through (iv) of this section, then the land is attributed to the trustee.

(c) *Class beneficiaries.* For purposes of identifying beneficiaries, a class of beneficiaries specified within the trust document will be acceptable, as long as the trust document is specific as to the beneficial interest to which each member of the class will be entitled and the members of the class are identifiable.

(1) Attribution during any given water year will be provided only to class beneficiaries that are natural persons and established legal entities. For purposes of administering the acreage limitation provisions, attribution to unborn or deceased persons, or entities not yet established, will not be allowed.

(2) If a trust includes a class of beneficiaries to which land subject to the acreage limitation provisions will be attributed, the trustee and each of the beneficiaries will be required to submit standard certification or reporting forms annually. The submittal of verification forms, as provided in § 426.18(l), will not be applicable to such trusts.

(d) *Application of full-cost rate to land held by grantor revocable trusts.* If a grantor revocable trust that meets the criteria specified in paragraph (b)(2) of this section is revised by the grantor in a manner that precludes attribution of the land held in trust to the grantor:

(1) Before April 20, 1988, Reclamation will not assess full-cost rates for the land held by the revised trust for the period before it was revised; or

(2) On or after April 20, 1988, Reclamation will charge the full-cost rate for irrigation water delivered to any land held by the trust that exceeds the grantor's nonfull-cost entitlement, commencing December 23, 1987, until the trust agreement is revised to make it an irrevocable trust or an otherwise revocable trust.

§ 426.8 Nonresident aliens and foreign entities.

(a) *Definitions for purposes of this section:*

Domestic entity means a legal entity established under State or Federal law.

Foreign entity means a legal entity not established under State or Federal law.

(b) *Restriction on receiving irrigation water.* Notwithstanding any other provision of Federal reclamation law or these regulations, a nonresident alien or foreign entity that directly holds land in a district that is subject to the discretionary provisions is not eligible to receive irrigation water on such land. Nonresident aliens and foreign entities may hold land indirectly in discretionary districts and both directly and indirectly in prior law districts and receive irrigation water on such land, subject to their acreage limitation entitlements.

(c) *Entitlements for nonresident aliens and foreign entities.* Except as provided in paragraph (d) of this section, all nonresident aliens and foreign entities will be considered prior law recipients, and shall have entitlements and eligibility only as prior law recipients as specified in §§ 426.5(d) and 426.6(b)(3).

(d) Exception to prior law entitlement application. (1) If a nonresident alien is a citizen of or a foreign entity is established in a country that has one of the following treaties with the United States or is a member of the listed organization, then that nonresident alien or foreign entity will not be restricted to prior law entitlements, provided the eligible landholding subject to the acreage limitation provisions is held indirectly:

(i) Friendship, Commerce and Navigation Treaty;

(ii) Bilateral Investment Treaty;

(iii) North American Free Trade Agreement;

(iv) Canada—United States Free Trade Agreement; or

(v) Organization for Economic Cooperation and Development.

(2) Nonresident aliens and foreign entities that meet the criteria listed in paragraph (d)(1) of this section will be required to provide proof of citizenship or documentation certifying the country in which the entity in question was established. Districts will retain such documentation in the landholder's file.

(3) If a nonresident alien or foreign entity meets the criteria listed in paragraph (d)(1) of this section, and only holds eligible land subject to the acreage limitation provisions indirectly, then the nonresident alien may be treated as a United States citizen or the foreign entity may be treated as a domestic entity for purposes of application of the acreage limitation provisions for the land held indirectly.

(i) The nonresident alien or foreign entity may submit an irrevocable election to conform to the discretionary provisions as provided for in § 426.3(f). Conformance to the discretionary provisions through the submittal of a certification form will not be allowed as specified in § 426.3(f)(3).

(ii) Upon Reclamation's approval of the irrevocable election, a nonresident alien will be treated as having the ownership entitlement of a qualified recipient as described in § 426.5(b), for any land held indirectly. A foreign entity will be treated as a qualified recipient or a limited recipient as determined by the number of natural persons who are beneficiaries of the entity as specified by the definitions found in § 426.2, and the subsequent entitlement as provided in § 426.5(b) or (c), for any land held indirectly. The applicable nonfull-cost entitlements will be determined as described in § 426.6(b).

(iii) Reclamation will not approve irrevocable elections submitted by a nonresident alien or a foreign entity that

holds any land directly in any prior law district.

(iv) Reclamation will not approve irrevocable elections submitted by a nonresident alien that is not a citizen of or foreign entity that has not been established in a country that has a treaty or international membership as specified in paragraph (d)(1) of this section.

§ 426.9 Religious or charitable organizations.

(a) *Definitions for purposes of this section:*

Central organization means the organization to which all subdivisions, such as parishes, congregations, chapters, etc., ultimately report.

Religious or charitable organization means an organization or each congregation, chapter, parish, school, ward, or similar subdivision of a religious or charitable organization that is exempt from paying Federal taxes under § 501 of the Internal Revenue Code of 1954, as amended.

(b) *Acreage limitation status of religious or charitable organizations that are subject to the discretionary provisions.* (1) Religious or charitable organizations or their subdivisions that are subject to the discretionary provisions have qualified recipient status, if:

(i) The organization's or subdivision's agricultural produce and proceeds from the sales of such produce are used only for charitable purposes;

(ii) The organization or subdivision, itself, operates the land; and

(iii) No part of the net earnings of the organization or subdivision accrues to the benefit of any private shareholder or individual.

(2) If Reclamation determines that a religious or charitable organization or any of its subdivisions does not meet the criteria listed in paragraph (b)(1) of this section, then:

(i) If the central organization has not met the criteria, Reclamation will treat the entire organization, including all subdivisions, as a single entity; or

(ii) If a subdivision has not met the criteria, only that subdivision and any subdivisions of it will be treated as a single entity and not the central organization or other subdivisions of the central organization; and

(iii) In order to ascertain the acreage limitation status, Reclamation determines the total number of members in both the organization that has not met the criteria and in any subdivisions that are under that organization. If Reclamation determines that total number equals:

(A) More than 25 members, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a limited recipient status; or

(B) 25 members or less, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a qualified recipient status.

(c) *Acreage limitation status of prior law religious or charitable organizations or subdivisions.* (1) Religious or charitable organizations and each of their subdivisions are treated as separate prior law corporations, if neither the district nor that religious or charitable organization or its subdivisions elect to conform to the discretionary provisions.

(2) Reclamation will treat the entire organization, including all subdivisions, as a single prior law corporation, if the central organization or any subdivisions do not meet the criteria specified in paragraph (b)(1) of this section.

(d) *Affiliated farm management between a religious or charitable organization and a more central organization of the same affiliation.* Reclamation permits a subdivision of a religious or charitable organization to retain its status as an individual entity while cooperating with a more central organization of the same affiliation in farm operation and management. Reclamation permits affiliated farm management regardless of whether the subdivision is the owner of the land being operated.

§ 426.10 Public entities.

(a) *Application of the acreage limitation provisions to public entities.* Reclamation does not subject public entities to the acreage limitation provisions of Federal reclamation law with respect to land that Reclamation determines public entities farm primarily for nonrevenue producing functions. However, public entities are required to meet certification and reporting requirements as specified in § 426.18.

(b) *Sale of public land.* Reclamation does not require public entities to seek price approval before they sell nonexempt lands. Once sold, Reclamation can make irrigation water available to such land if the purchaser meets RRA eligibility requirements.

(c) *Leasing of public land.* Public entities can lease irrigation land that they own or control to eligible landholders. Land leased from a public entity counts towards the lessee's ownership and nonfull-cost entitlement.

§ 426.11 Class 1 equivalency.

(a) *General application.* Class 1 equivalency determinations will establish, on a district-wide basis, the acreage of land with lower productive potential (Classes 2, 3, and 4) that would be equivalent in productive potential to the most suitable land (Class 1) in the local agricultural economic setting.

(1) Reclamation establishes equivalency factors by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on Class 1 land.

(2) For equivalency purposes, Reclamation will classify all irrigable land as Class 1, 2, or 3; no other classifications are permissible for irrigable land. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.

(3) Once the Class 1 equivalency determinations have been made, individual landowners with land classified as 2 or 3 for equivalency purposes will have the right to adjust their actual landholding acreage to its Class 1 equivalent acreage.

(4) In a district subject to prior law, Class 1 equivalency can be applied only to landholders who are subject to the discretionary provisions.

(5) Requests for equivalency determinations will be scheduled by region, with the regional director of each Reclamation region having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.

(b) *Who may request a Class 1 equivalency determination?* Only districts may request Class 1 equivalency determinations. Upon the request of any district subject to the acreage limitation provisions, Reclamation will make a Class 1 equivalency determination for that district. Equivalency determinations can be made only on a district-wide basis.

(c) *Definition of Class 1 land.* (1) Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting that:

(i) Most completely meets the various parameters and specifications established by Reclamation for irrigable land classes;

(ii) Has the relatively highest level of suitability for continuous, successful irrigation farming; and

(iii) Is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The equivalency

analysis will establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of Class 1 land.

(2) All land that Reclamation has not classified, or for which Reclamation has not yet performed the necessary economic studies, will be considered Class 1 land for the purposes of determining entitlements under these rules until such time as the necessary classifications or studies have been completed.

(d) *Determination of land classes.* The extent and location of Class 1 land and land in lower land classes in a district have been, or will be, determined by Reclamation.

(1) Reclamation will take into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors will include, but are not limited to the following and their effect on agricultural practices:

(i) The physical and chemical characteristics of the soil;

(ii) Topography;

(iii) Drainage status;

(iv) Costs of production;

(v) Land development costs;

(vi) Water quality and adequacy;

(vii) Elevation;

(viii) Crop adaptability; and

(ix) Length of growing season.

(2) Acceptable levels of detail for land classification studies to be utilized in making Class 1 equivalency determinations for a given district will be evaluated on the basis of the physical and agricultural economic characteristics of the area. For districts where the sole purpose of the land classification study is for a Class 1 equivalency determination, the level of detail of the land classification to be made will never be greater than that required to make a Class 1 equivalency determination.

(3) Reclamation will pay for at least a portion of the costs associated with the land classification study. The amount to be paid by Reclamation will be determined as follows:

(i) Reclamation has provided basic land classification data as part of the project development process since 1924. Accordingly, if Reclamation determines that acceptable land classification data are not available for making requested Class 1 equivalency determinations and if the project was authorized for construction since 1924, such data will be made available at Reclamation's expense; or

(ii) For each district located in projects authorized for construction prior to 1924, Reclamation will pay 50 percent of the costs and the district must pay 50 percent of the costs of new land classification studies required to make accurate Class 1 equivalency determinations.

(4) When basic land classification data are available for a district, but the district does not agree with the accuracy or asserts that the data have become outdated, the district may request, and Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (43 U.S.C. 485), with the following conditions:

(i) The requesting district will pay 50 percent of the costs of performing such reclassifications and 100 percent of the costs of all other studies involved in the equivalency process; and

(ii) The results of such reclassifications will be binding upon the requesting district and Reclamation.

(e) *Additional studies required for Class 1 equivalency determinations.* Economic studies related to Class 1 equivalency determinations will measure net farm income by land classes within the district.

(1) Net farm income will be determined by considering the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land, after all fixed and variable costs of production, including costs of irrigation service, are accounted for.

(2) Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of Class 1 land.

(3) The cost of performing new or additional economic studies and computations inherent in the equivalency process will be the responsibility of the requesting district.

(f) *Use of Class 1 equivalency with the acreage limitation provisions.* Class 1 land and land in lower classes will be identified on a district basis by Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors will then be computed for the district and applied to specific tracts within individual landholdings. If adequate land classification data are not available, they will be developed as specified in paragraph (d) of this section using standard procedures established by Reclamation.

(1) For purposes of ownership entitlement, Class 1 equivalency will not be applied until a final determination has been made by Reclamation concerning the district's request for equivalency.

(i) Reclamation will protect excess landowners' property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district requests an equivalency determination at least 6 months prior to the maturity of the recordable contract, the district fulfills its obligations under this section, and the district notifies Reclamation 6 months in advance of the maturity dates for the need for an expedited review.

(ii) Once the determination has been made, owners of land subject to recordable contracts may withdraw land from such recordable contracts in order to reach their ownership entitlement in Class 1 equivalent acreage.

(iii) The requirement that land under recordable contract be sold at a price approved by Reclamation does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess landholding as a result of an equivalency determination.

(iv) In cases of equivalency determination disputes, Reclamation will not undertake the sale of the reasonable increment of the excess land under a matured recordable contract which could be affected by a reclassification, provided the dispute is determined by Reclamation not to be an attempt to thwart the sale of excess land.

(2) For purposes of nonfull-cost entitlement, Class 1 equivalency will not be applied until a final determination has been made by Reclamation on a district's request for equivalency.

(i) During the time when such determinations are pending, the full-cost rate will be assessed based on a landholder's nonfull-cost entitlement as determined in the absence of Class 1 equivalency.

(ii) Following Reclamation's final determination, Reclamation will reimburse the district for any full-cost charges that would not have been assessed had Class 1 equivalency been in place from the date of the district's request. Districts will return such reimbursements to the appropriate landholders.

(3) A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalency (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as Class 1 land for purposes of overall entitlement.

(g) *Prior equivalency determinations.* In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district requests a reclassification.

§ 426.12 Excess land.

(a) *The process of designating excess and nonexcess land.* If a landowner owns more land than the landowner's ownership entitlement, all of the landowner's nonexempt land must be designated as excess and nonexcess as follows:

(1) The landowner designates which land is excess and which is nonexcess in accordance with the instructions on the appropriate certification or reporting forms; or

(2) If a landowner fails to designate his or her land as excess or nonexcess on the appropriate certification or reporting forms:

(i) And all of the landowner's nonexempt land is in only one district:

(A) If the district's contract with Reclamation includes designation procedures, then the land is designated according to those procedures; or

(B) If the district's contract with Reclamation does not include designation procedures, then:

(*1*) Reclamation will notify the landowner and the district that the landowner must designate the land as excess and nonexcess on the appropriate certification or reporting forms within 30-calendar days of the notification;

(*2*) If the landowner fails to make the designation within 30-calendar days of notification, the district will make the designation within 30-calendar days thereafter; or

(*3*) If the district does not make the designation within its 30-calendar days, Reclamation will make the designation; or

(ii) If the landowner owns nonexempt land in more than one district, then Reclamation will notify the landowner and the districts that the landowner has 60-calendar days from the date of notification to make the designation. If the landowner does not make the designation in the 60-calendar days, Reclamation will make the designation.

(b) *Changing excess and nonexcess land designations.* (1) Landowners must file with the district(s) in which the land is located and with Reclamation the designation of excess and nonexcess land. The designation of land as excess is binding on the land. However, the landowner may change the designation under the following circumstances without Reclamation's approval if:

(i) The excess land becomes eligible to receive irrigation water because the landowner becomes subject to the discretionary provisions as provided in § 426.3;

(ii) A recordable contract is amended to remove excess land when the landowner's entitlement increases because the landowner becomes subject to the discretionary provisions as provided in paragraph (j)(5) of this section; or

(iii) The excess land becomes eligible to receive irrigation water as a result of Class 1 equivalency determinations, as provided in § 426.11.

(2) No other redesignation of excess land is allowable without the approval of Reclamation in accordance with established Reclamation procedures. Reclamation will not approve a redesignation request if:

(i) The purpose of the redesignation is for achieving, through repeated redesignation, an effective farm size in excess of that permitted by Federal reclamation law; or

(ii) The landowner sells some or all of his or her land that is currently classified as nonexcess.

(3) When a redesignation involves an exchange of nonexcess land for excess land, a landowner must make an equal exchange of acreage (or Class 1 equivalent acreage) through the redesignation.

(c) *Land that becomes excess when a district first contracts with Reclamation.* (1) If a landowner owned irrigable land on the execution date of the district's first water service or repayment contract, and the execution date was on or before October 12, 1982, the landowner's excess land is ineligible until the landowner:

(i) Becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;

(ii) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;

(iii) Sells or transfers such excess land to an eligible buyer at a price and on terms approved by Reclamation; or

(iv) Redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.

(2) If the landowner owned irrigable land on the execution date of the district's first water service or repayment contract and the execution date is after October 12, 1982, the landowner's excess land is ineligible until the landowner:

(i) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;

(ii) Sells or transfers such excess land to an eligible buyer at a price and on terms approved by Reclamation; or

(iii) Redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.

(d) *Land acquired into excess after the district has already contracted with Reclamation.* (1) If a landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water service contract was executed on or before October 12, 1982, and:

(i) Irrigation water was physically available when the landowner acquires such land, then the land is ineligible to receive such water until:

(A) The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;

(B) The landowner sells or transfers such land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is canceled; or

(D) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or

(ii) Irrigation water was not physically available when the landowner acquired the land, then the land is ineligible to receive water until:

(A) The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;

(B) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is canceled;

(D) The landowner places the land under recordable contract when water becomes available; or

(E) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.

(2) If a landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water

service contract was executed after October 12, 1982, and:

(i) Irrigation water was physically available when the landowner acquired such land, then the land is ineligible until:

(A) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is canceled; or

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or

(ii) Irrigation water was not physically available when the landowner acquired such land, then the land is ineligible to receive water until:

(A) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is canceled;

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or

(D) The landowner places the land under recordable contract when water becomes available.

(e) *If the status of land is changed by law or regulations.* (1) If the district had a contract with Reclamation on or before October 12, 1982, and eligible land became excess because the landowner's entitlement changed from being based on a district-by-district basis to a westwide basis, then such formerly eligible land is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.

(2) If the district had a contract with Reclamation on or before October 12, 1982, and the landowner was a nonresident alien or a legal entity not established under State or Federal law, who directly held eligible land and such land is no longer eligible to receive water, then such formerly eligible land is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.

(3) If the district first entered a contract with Reclamation after October 12, 1982, and land would have been eligible before October 12, 1982, but is now ineligible because the landowner is a direct landholder and either a nonresident alien or a legal entity not established under State or Federal law, then such land that would have been eligible remains ineligible until:

(i) If the landowner acquired such land before the date of the district's contract:

(A) The landowner places such land under a recordable contract requiring Reclamation sales price approval; or

(B) Sells or transfers the land to an eligible buyer subject to Reclamation sales price approval; or

(ii) If the landowner acquired such land after the date of the district's contract, the landowner sells or transfers such land to an eligible buyer subject to Reclamation sales price approval.

(4) Eligible nonexcess land that is indirectly owned on or before December 18, 1996 by a nonresident alien or a legal entity not established under State or Federal law, and that becomes ineligible because of § 426.8 is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.

(f) *Excess land that is acquired without price approval.* If a landowner acquires land that is subject to Reclamation price approval, without obtaining such approval, the land is ineligible to receive water until:

(1) The sales price is reformed to conform to the price approved by Reclamation and is eligible to receive irrigation water in the landowner's ownership entitlement; or

(2) Such landowner sells or transfers the land to an eligible buyer at a price approved by Reclamation.

(g) *Excess land that is disposed of and subsequently reacquired.* Districts may not make available irrigation water to excess land disposed of by a landholder at a price approved by Reclamation, whether or not under a recordable contract, if the landholder subsequently becomes a direct or indirect landholder of that land through either a voluntary or involuntary action, unless:

(1) The landholder became or contracted to become a direct or indirect landholder of that land prior to December 18, 1996, and the land in question is otherwise eligible to receive irrigation water;

(2) Such land becomes exempt from the acreage limitations of Federal reclamation law;

(3) The landholder pays the full-cost rate for any irrigation water delivered to the landholder's formerly excess land that is otherwise eligible to receive irrigation water. If a landholder is a part owner of a legal entity that becomes the direct or indirect landholder of the land in question, then the full-cost rate will be applicable to the proportional share of irrigation water delivered to the land that reflects the part owner's interest in that legal entity; or

(4) The deed covenant associated with the sale has expired as provided for in paragraph (i) of this section.

(h) *Application of the compensation rate for irrigating ineligible excess land with irrigation water.* Reclamation will charge the following for irrigation water delivered to ineligible excess land in violation of Federal reclamation law and these regulations:

(1) The appropriate compensation rate for irrigation water delivered; and

(2) any other applicable fees as specified in § 426.20.

(i) *Deed covenants.* (1) All land that is acquired from excess status after October 12, 1982, must have the following covenant (that runs with the land) placed in the deed transferring the land to the acquiring party in order for the land to be eligible to receive irrigation water except as otherwise specified in these regulations. The covenant must be in the deed regardless of whether or not the land was under recordable contract.

This covenant is to satisfy the requirements in 209(f)(2) of Pub. L. 97–293 (43 U.S.C 390, *et seq.*). This covenant expires on (date) . Until the expiration date specified herein, sale price approval is required on this land. Sale by the landowner and his or her assigns of these lands for any value that exceeds the sum of the value of newly added improvements plus the value of the land as increased by the market appreciation unrelated to the delivery of irrigation water will result in the ineligibility of this land to receive Federal project water, provided however:

(i) The terms of this covenant requiring price approval shall not apply to this land if it is acquired into excess status pursuant to a bona fide involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise (hereinafter Involuntary Conveyance). Thereafter, this land may be sold to a landholder at its fair market value without regard to any other provision of the Reclamation Reform Act of 1982 enacted on

October 12, 1982, (43 U.S.C. 390aa *et seq.*), or to Section 46 of the Act entitled ''an Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes,'' enacted May 25, 1926 (43 U.S.C. 423e);

(ii) If the status of this land changes from nonexcess into excess after a mortgage or deed of trust in favor of a lender is recorded and the land is subsequently acquired by a bona fide Involuntary Conveyance by reason of a default under that loan, this land may thereupon or thereafter be sold to a landholder at its fair market value;

(iii) The terms of this covenant requiring price approval shall not apply to the sales price obtained at the time of the Involuntary Conveyances described in subparagraphs (i) and (ii), nor to any subsequent voluntary sales by a landholder of this land after the Involuntary Conveyances or any subsequent Involuntary Conveyance;

(iv) Upon the completion of an Involuntary Conveyance, Reclamation shall reconvey or otherwise terminate this covenant of record;

(v) However, the deed covenant shall not be reconveyed or otherwise terminated if the involuntarily acquiring landowner is the landowner who sold this land from excess status, unless that landowner is a financial institution as defined in § 426.14(a) of the Acreage Limitation Rules and Regulations (43 CFR Part 426); and

(vi) The party whose excess ownership originally required the placement of this covenant may not receive Federal reclamation project irrigation water on the land subject to this covenant as a direct or indirect landowner or lessee, unless an exception provided for in § 426.12(g) is met.

Note: 1. Clauses (v) and (vi) of this covenant shall only be required on those covenants placed in deeds transferring land after January 1, 1998.

Note: 2. The date that the covenant expires shall be 10 years from the date the land was first transferred from excess to nonexcess status.

(2) A landholder may purchase or otherwise voluntarily acquire into nonexcess status, land subject to a deed covenant, at a price approved by Reclamation if the land is within the landholder's ownership entitlement.

(3) Upon expiration of the terms of the deed covenant, a landowner may resell such land at fair market value. A landowner may not sell more of such land in his or her lifetime than an amount equal to his or her ownership entitlement. Once the landowner reaches this limit, any additional excess land or land subject to a deed covenant the landowner acquires is ineligible to receive irrigation water, until such land is sold to an eligible buyer at a price approved by Reclamation.

(4) If a landholder acquires land burdened by such a deed covenant through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt, including, but not limited to, a mortgage, real estate contract, or deed of trust, inheritance, or devise, and is not the party whose excess ownership originally required placement of the deed covenant, then Reclamation must terminate the deed covenant upon the landholder's request. The provisions in paragraph (i)(1)(v) of this section and § 426.14(e) address termination of deed covenants for landholders whose excess ownership originally required placement of the deed covenant.

(j) *Recordable contracts.* (1) *Qualifications for recordable contracts.* A landowner can make excess land eligible to receive irrigation water by entering into a recordable contract with the United States if the landowner qualifies under applicable provisions of:

(i) The district's contract with Reclamation;

(ii) Federal reclamation law; and

(iii) These regulations.

(2) *Clauses to be included in recordable contracts.* A recordable contract must include:

(i) A clause whereby the landowner agrees to dispose of the excess land to an eligible buyer, excluding mineral rights and easements, under terms and conditions of the sale, in accordance with § 426.13; and within the period allowed for the disposition of excess land, that must be within 5 years from the date that the recordable contract is executed by Reclamation (except for the Central Arizona Project wherein the time period is 10 years from the date water becomes available to the land); and

(ii) A clause granting power of attorney to Reclamation to sell the land held under the recordable contract, if the landholder has not already sold the land by the recordable contract's maturation.

(3) *Date Reclamation can make irrigation water available.* Reclamation can make available irrigation water to land that the landowner plans to place under a recordable contract on the day that Reclamation receives the landowner's written request to execute a recordable contract. The landowner has 20-working days in which to execute the recordable contract from the date Reclamation sends the recordable contract to the landowner. Reclamation, in its discretion, may extend this period upon the landowner's request.

(4) *Water rate.* The rate for irrigation water delivered to land placed under recordable contract will be determined as follows:

(i) If both the landowner and any lessee are prior law recipients, land placed under a recordable contract can receive irrigation water at a contract rate that does not cover full operation and maintenance (O&M) costs;

(ii) If either landowner or any lessee is subject to the discretionary provisions, the water rate applicable to the recordable contract must cover, at a minimum, all O&M costs; or

(iii) If a landholder leases land subject to a recordable contract and is in excess of his or her nonfull-cost entitlement, the lessee may select such land as the land on which the full-cost rate will be charged for the delivery of irrigation water, unless the land is already subject to the full-cost rate because of an extended recordable contract.

(5) *Amending a recordable contract to include less acreage.* (i) Reclamation permits a landowner to amend a recordable contract to transfer land out of a recordable contract to nonexcess status, if:

(A) The landowner has an increased ownership entitlement because of becoming subject to the discretionary provisions; or

(B) Land becomes eligible by implementation of Class 1 equivalency, if the landowner amends the recordable contract prior to performance of appraisal.

(ii) Landholders must receive Reclamation's approval to amend recordable contracts.

(A) The disposition period for any land remaining under a recordable contract will not change because of an amendment to remove some land.

(B) For land removed from a recordable contract based on paragraph (j)(5)(i) of this section, any requirement for application of a deed covenant will no longer be applicable.

(6) *Sale of land by Reclamation.* If the landowner does not dispose of the excess land held under recordable contract within the period specified in the recordable contract, Reclamation will sell that land. Reclamation will not sell the land if the landowner complies with all requirements for sale of excess land under these rules within the period specified, regardless if Reclamation gives final approval of the sale within that period or after.

(7) *Delivery of water when a recordable contract has matured.* Reclamation can make available irrigation water at the current applicable rate, pursuant to paragraph (j)(4) of this section, to excess land held under a matured recordable contract until Reclamation sells the land.

(8) *Procedures Reclamation follows in selling excess land.* If Reclamation must sell excess land, the following procedures will be used:

(i) If Reclamation determines it to be necessary, a qualified surveyor will

make a land survey. The United States will pay for the survey initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land;

(ii) Reclamation will appraise the value of the excess land, in the manner prescribed by § 426.13, to determine the appropriate sales price. The United States will pay for the appraisal initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land; and

(iii) Reclamation will advertise the sale of the property in farm journals and in newspapers within the county in which the land lies, and by other public notices as deemed advisable. The United States will pay for the advertisements and notices initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land. The notices must state:

(A) The minimum acceptable sales price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising);

(B) That Reclamation will sell the land by auction for cash, or on terms acceptable to the landowner, to the highest eligible bidder whose bid equals or exceeds the minimum acceptable sales price; and

(C) The date of the sale (which must not exceed 90 calendar days from the date of the advertisement and notices);

(iv) The proceeds from the sale of the land will be paid:

(A) First, to the landowner in the amount of the appraised value;

(B) Second, to the United States for costs of the survey, appraisal, advertising, etc.; and

(C) Third, any remaining proceeds will be credited to the Reclamation fund or other funds as prescribed by law; and

(v) Reclamation will close the sale of the excess land when parties complete all sales arrangements. Reclamation will execute a deed conveying the land to the purchaser. Reclamation will not require the purchaser to include a covenant in the deed, as specified in paragraph (i) of this section, that restricts any further resale of the land.

§ 426.13 Excess land appraisals.

(a) *When does Reclamation appraise the value of a landowner's land?* Reclamation appraises excess land or land burdened by a deed covenant upon a landowner's request or when required by Reclamation. If a landowner does not request an appraisal within 6 months of the maturity date of a recordable contract, Reclamation, in its discretion, can initiate the appraisal.

(b) *Procedures Reclamation uses to determine the sale price of excess land or land burdened by a deed covenant.* Reclamation complies with the following procedures to determine the sale price of excess land and land burdened by a deed covenant, except if a landholder owns land subject to a recordable contract that was in force on October 12, 1982, or other pertinent contract that was in force on that date, and these regulations would be inconsistent with provisions in such a contract:

(1) *Appraisals of land.* Reclamation will base all appraisals of land on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Reclamation must use standard appraisal procedures including: the income, comparable sales, and cost methods, as applicable. Reclamation will consider nonproject water supply factors as provided in paragraph (c)(1) of this section as appropriate; and

(2) *Appraisal of improvements to land.* Reclamation will assess the contributory fair market value of improvements to land, as of the date of appraisal, using standard appraisal procedures.

(c) *Appraisals of nonproject water supplies.* (1) The appraiser will consider nonproject water supply factors, where appropriate, including:

(i) Ground water pumping lift;

(ii) Surface water supply;

(iii) Water quality; and

(iv) Trends associated with paragraphs (c)(1) (i) through (iii) of this section, where appropriate.

(2) Reclamation will develop the nonproject water supply and trend information with the assistance of:

(i) The district in which the land is located, if the district desires to participate;

(ii) Landowners of excess land or land burdened by a deed covenant and prospective buyers who submit information either to the district or Reclamation; and

(iii) Public meetings and forums, at the discretion of Reclamation.

(3) Data submitted may include:

(i) Historic geologic data;

(ii) Changing crops and cropping patterns; and

(iii) Other factors associated with the nonproject water supply.

(4) If Reclamation and the district cannot reach agreement on the nonproject water supply information within 60-calendar days, Reclamation will review and update the trend information as it deems necessary and make all final determinations considering the data provided by Reclamation and the district. Reclamation will provide these data to the appraisers who must consider the data in the appraisal process, and clearly explain how they used the data in the valuation of the land.

(d) *The date of the appraisal.* The date of the appraisal will be the date of last inspection by the appraiser(s) unless there is a prior signed instrument, such as an option, contract for sale, agreement for sale, etc., affecting the property. In those cases, the date of appraisal will be the date of such instrument.

(e) *Cost of appraisal.* If the appraisal is:

(1) The land's first appraisal, the United States will initially pay the costs of appraising the value of the land, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land;

(2) Not the land's first appraisal, the landowner requesting the appraisal must pay any costs associated with the reappraisal, unless the value set by the reappraisal differs by more than 10 percent, in which case the United States will pay for the reappraisal; or

(3) Associated with a sales price reformation as specified in § 426.12(f)(1), the landowner requesting the appraisal must pay any costs associated with the appraisal.

(f) *Appraiser selection.* Reclamation will select a qualified appraiser to appraise the excess land or land burdened by a deed covenant, except as specified within paragraph (g) of this section.

(g) *Appraisal dispute resolution.* The landowner who requested the appraisal may request that the United States conduct a second appraisal of the excess land or land burdened by a deed covenant if the landowner disagrees with the first appraisal. The second appraisal will be prepared by a panel of three qualified appraisers, one designated by the United States, one designated by the district, and the third designated jointly by the first two. The appraisal made by the panel will fix the maximum value of the excess land and will be binding on both parties after review and approval as provided in paragraph (h) of this section.

(h) *Review of appraisals of excess land or land burdened by a deed covenant.* Reclamation will review all appraisals of excess land or land burdened by a deed covenant for:

(1) Technical accuracy and compliance with these rules and regulations;

(2) Applicable portions of the ''Uniform Appraisal Standards for Federal Land Acquisition-Interagency Land Acquisition Conference 1973,'' as revised in 1992;

(3) Reclamation policy; and

(4) Any detailed instructions provided by Reclamation setting conditions applicable to an individual appraisal.

§ 426.14 Involuntary acquisition of land.

(a) *Definitions for purposes of this section.*

Financial institution means a commercial bank or trust company, a private bank, an agency or branch of a foreign bank in the United States, a thrift institution, an insurance company, a loan or finance company, or the Farm Credit System.

Involuntarily acquired land means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

(b) *Ineligible excess land that is involuntarily acquired.* Reclamation cannot make available irrigation water to land that was ineligible excess land before the new landowner involuntarily acquired it, unless:

(1) The land becomes nonexcess in the new landowner's ownership; and

(2) The deed to the land contains the 10-year covenant requiring Reclamation sale price approval, and that deed commences when the land becomes eligible to receive irrigation water.

(3) If either of these conditions is not met, the land remains ineligible excess until sold to an eligible buyer at an approved price, and the seller places the 10-year covenant requiring Reclamation price approval, as specified in § 426.12(i), in the deed transferring title to the land to the buyer.

(c) *Land that was held under a recordable contract and is acquired involuntarily.* Reclamation can make available irrigation water to land held under a recordable contract that is involuntarily acquired under the terms of the recordable contract to the extent the land continues to be excess in his or her landholding, if the landowner:

(1) assumes the recordable contract; and

(2) executes an assumption agreement provided by Reclamation.

(3) This land will remain eligible to receive irrigation water for the longer of 5 years from the date that the land was involuntarily acquired, or for the remainder of the recordable contract period. The sale of this land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by Reclamation.

(d) *Mortgaged land.* Reclamation treats mortgaged land that changed from nonexcess status to excess status after the mortgage was recorded, and which is subsequently acquired by a lender through an involuntary foreclosure or similar process of law, or by a bona fide conveyance in satisfaction of a mortgage, in the following manner:

(1) If the new landowner designates the land as excess in his or her holding, then:

(i) The land is eligible to receive irrigation water for a period of 5 years or until transferred to an eligible landowner, whichever occurs first;

(ii) During the 5-year period Reclamation will charge a rate for irrigation water equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing; and

(iii) The land is eligible for sale at its fair market value without a deed covenant restricting its future sales price; or

(2) If the new landowner is eligible to designate the land as nonexcess and he or she designates the land as nonexcess, the land will be treated in the same manner as any other nonexcess land and will be eligible for sale at its fair market value without a deed covenant restricting its future sales price.

(e) *Nonexcess land that becomes excess when acquired involuntarily.* (1) Reclamation can make irrigation water available for a period of 5 years to a landowner who involuntarily acquires land that becomes excess in the involuntarily acquiring landowner's holding provided the land was nonexcess to the previous owner and:

(i) The acquiring landowner never previously held such land as ineligible excess land or under a recordable contract;

(ii) The acquiring landholder is a financial institution; or

(iii) The acquiring landowner previously held the land as ineligible excess or under a recordable contract and §§ 426.12(g)(1), (3), or (4) applies.

(2) The following will be applicable in situations that meet the criteria specified under paragraph (e)(1) of this section:

(i) Reclamation will charge a rate for irrigation water delivered to such land equal to the rate paid by the former owner, except Reclamation will charge the full-cost rate if:

(A) The land becomes subject to full-cost pricing through leasing; or

(B) If the involuntarily acquired land is eligible to receive irrigation water only because § 426.12(g)(3) applies and the deed covenant has not expired;

(ii) The new landowner may not place such land under a recordable contract;

(iii) The new landowner may request that Reclamation remove a deed covenant as provided in § 426.12(i)(4), and may sell such land at any time without price approval and without the deed covenant. However, the deed covenant will not be removed and the terms of the deed covenant will be fully applied if the new landowner is the landowner who sold the land in question from excess status, except for:

(A) Financial institutions; or

(B) Landowners for which §§ 426.12(g) (1) or (2) apply; and

(iv) Such land will become ineligible to receive irrigation water 5 years after it was acquired and will remain ineligible until sold to an eligible buyer or redesignated as provided for in paragraph (f) of this section.

(f) *Redesignation of excess land to nonexcess.* Landholders who designate involuntarily acquired land as excess as provided for in paragraphs (d)(1) and (e)(1) of this section and want to redesignate the land as nonexcess, must utilize the redesignation process specified under § 426.12(b)(2).

(1) However, such redesignations will not be approved if the water rate specified in paragraphs (d)(1)(ii) or (e)(2)(i) of this section is less than what would have been charged for water deliveries to the land in question if the landholder that involuntarily acquired the land had originally designated the land as nonexcess.

(2) Such landholders may utilize the redesignation process, if they remit to Reclamation the difference between the rate paid and the rate that would have been paid, if the land had been designated as nonexcess when involuntarily acquired, for all irrigation water delivered to the land in question while the land was designated as excess.

(g) *Effect of involuntarily acquiring land subject to the discretionary provisions.* A landowner does not automatically become subject to the discretionary provisions if the landowner acquires irrigation land involuntarily which was formerly subject to the discretionary provisions. However, a landholder that is subject to the prior law provisions will become subject to the discretionary provisions upon involuntarily acquiring land if:

(1) The land is located in a district that is subject to the discretionary provisions;

(2) The landholder in question will be the direct landowner of the land; and

(3) The landholder in question declares the land as nonexcess.

(h) *Land acquired by inheritance or devise.* If a landowner receives irrigation land through inheritance or devise, the 5-year eligibility period for receiving irrigation water on the newly acquired land per paragraphs (c)(3) and (e) of this section begins on the date of the previous landowner's death.

§ 426.15 Commingling.

(a) *Definition for purposes of this section*:

Commingled water means irrigation water and nonproject water that use the same facilities.

(b) *Application of Federal reclamation law and these regulations to prior commingling provisions in contracts.* If a district entered into a contract with Reclamation prior to October 1, 1981, and that contract has provisions addressing commingled water situations, those provisions stay in effect for the term of that contract and any renewals of it.

(c) *Establishment of new commingling provision in contracts.* New, amended, or renewed contracts may provide that irrigation water can be commingled with nonproject water as follows:

(1) If the facilities used for the commingling of irrigation water and nonproject water are constructed without funds made available pursuant to Federal reclamation law, the provisions of Federal reclamation law and these regulations will apply only to the landholders who receive irrigation water, provided:

(i) That the water requirements for eligible lands can be established; and

(ii) The quantity of irrigation water to be used is less than or equal to the quantity necessary to irrigate eligible lands.

(2) If the facilities used for commingling irrigation water and nonproject water are funded with monies made available pursuant to Federal reclamation law, landholders who receive nonproject water will be subject to Federal reclamation law and these regulations unless:

(i) The district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal Government, including interest, of storing or delivering the nonproject water; and

(ii) The fee will be established by Reclamation and will be in addition to the district's obligation to pay for capital, operation, maintenance, and replacement costs associated with the facilities required to provide the service.

(3) If paragraphs (c)(2) (i) and (ii) of this section are met, the provisions of Federal reclamation law and these regulations will be applicable to only those landholders who receive irrigation water. Accordingly, the provisions of Federal reclamation law and these regulations will not be applicable to landholders who receive nonproject water delivered through facilities funded with monies made available pursuant to Federal reclamation law if those paragraphs are met.

(d) *When Federal reclamation law and these regulations do not apply.* Federal reclamation law and these regulations do not apply to landholders receiving irrigation water from federally financed facilities if the irrigation water is acquired by an exchange and that exchange results in no material benefit to the recipient of the irrigation water.

§ 426.16 Exemptions and exclusions.

(a) *Army Corps of Engineers (Corps) projects.* (1) If Reclamation determines that land receives its agricultural water from a Corps project, Reclamation will exempt that land from specific provisions of Federal reclamation law, including the RRA, unless:

(i) Federal law explicitly designates, integrates, or incorporates that land into a Federal Reclamation project; or

(ii) Reclamation provides project works for the control or conveyance of the agricultural water supply from the Corps project to that land.

(2) Upon such determination, Reclamation will:

(i) Notify the district of its exemption status;

(ii) Require the district's agricultural water users to continue, under contracts made with Reclamation, to repay their share of construction, operation and maintenance, and contract administration costs of the Corps project allocated to conservation or irrigation storage; and

(iii) At the request of the district delete provisions of the district's repayment or water service contract that imposes acreage limitation for those lands served by Corps projects.

(b) *Repayment of construction obligations.* The acreage limitation provisions do not apply to land in a district after the district has repaid, in accordance with the district's contract with Reclamation, all obligated construction costs for project facilities.

(1) Payments by periodic installments over the contract repayment term, as well as lump-sum and accelerated payments, if allowed by the district's contract with Reclamation, will qualify the district to become exempt.

(2) If a district has a contract with the United States providing for individual landowner repayment of construction charges allocated to land, and the landowner has repaid all obligated construction costs allocated for that landowner's land, that landowner will become exempt from the acreage limitation provisions.

(3) Upon payout Reclamation will:

(i) Notify the district, and individual landowner in cases of individual landowner payout, of the exemption from the acreage limitation provisions;

(ii) Notify the district or individual landowner that the exemption does not relieve the district or individual landowner of the obligation to continue to pay, on an annual basis, O&M costs applicable to the district or landowner;

(iii) Upon request by the owner of land for which repayment has occurred, provide a certificate from Reclamation acknowledging that the land is free of the acreage limitation provisions of Federal reclamation law;

(iv) Except as provided for in § 426.19(e), no longer apply the certification and reporting requirements to the district, if the entire district is exempt, or to exempt landowners as specified in paragraph (b)(2) of this section; and

(v) Consider on a case-by-case basis continuation of the exemption if additional construction funds for the project are requested.

(c) *Rehabilitation and Betterment loans.* If Reclamation makes a Rehabilitation and Betterment loan (pursuant to the Rehabilitation and Betterment Act of October 7, 1949, as amended, 43 U.S.C. 504) to a project that was authorized under Federal reclamation law prior to the submittal of the loan request, by or for the district, Reclamation:

(1) Considers the loan as a loan for maintenance, including replacements that cannot be financed currently;

(2) Does not consider the loan in determining whether the district has discharged its obligation to repay the construction cost of project facilities used to make irrigation water available for delivery to land in the district; and

(3) Will not allow such a loan to serve as the basis for reinstating acreage limitation provisions in a district that has completed payment of its construction obligation, nor serve as the basis for increasing the construction obligation of the district and thereby extending the period during which acreage limitation provisions will apply.

(d) *Temporary supplies of water.* If Reclamation announces availability of temporary supplies of water resulting from an unusually large water supply,

not otherwise storable for project purposes, or from infrequent and otherwise unmanaged floodflows of short duration a district may request that Reclamation make such supplies available to excess land. However, such water deliveries must not have an adverse effect on other authorized project purposes. Upon approval of the district's request, Reclamation will notify the requesting district of the availability of the temporary supply of water under the following conditions:

(1) The contract for the temporary supply of water will be for 1 year or less in accordance with prior policies and practices;

(2) The acreage limitation provisions will not be applicable to the temporary supply of water;

(3) An applicable price for the water, if any, will be established; and

(4) Such other conditions as Reclamation may include.

(e) *Isolated tracts.* If a landowner requests that Reclamation determine that portions of his or her owned land are isolated tracts that can be farmed economically only if included in a farming operation that already exceeds the landowners ownership entitlement, and Reclamation makes such a determination, then Reclamation:

(1) Will exempt such land from the ownership limitations of Federal reclamation law; and

(2) Will assess the full-cost rate for any irrigation water delivered to the isolated tract that exceeds the landowner's nonfull-cost entitlement.

(f) *Indian trust or restricted lands.*

(1) Indian trust or restricted lands are excluded from application of the acreage limitation provisions.

(2) Indian tribes and tribal entities operating on Indian trust or restricted lands are excluded from application of the water conservation provisions.

§ 426.17 Small Reclamation projects.

(a) *Effect of the RRA on loan contracts made under the Small Reclamation Projects Act.* (1) If a district entered into a loan contract under the Small Reclamation Projects Act of 1956 (43 U.S.C. 422) (SRPA) on or after October 12, 1982, the contract is subject to the provisions of the SRPA, as amended by Section 223 of the RRA and as amended by Title III of Pub. L. 99–546.

(2) If a district entered into an SRPA loan contract prior to October 12, 1982, and the district:

(i) Did not amend the loan contract to conform to the SRPA, as amended by Section 223 of the RRA, prior to October 27, 1986, then the acreage provisions of the contract continue in effect, unless the contract is amended to conform to the SRPA as amended by section 307 of Pub. L. 99–546.

(ii) Amended the loan contract to conform to the SRPA, as amended by Section 223 of the RRA, prior to October 27, 1986, the contract is subject to the increased acreage provisions provided in Section 223 of the RRA. Reclamation cannot alter, modify or amend any other provision of the SRPA loan contract without the consent of the non-Federal party.

(b) *Other sections of these regulations that apply to SRPA loans.* No other sections of these regulations apply to SRPA loans, except as specified in § 426.3(a)(3)(ii) and paragraph (d) of this section.

(c) *Effect of SRPA loans in determining whether a district has repaid its construction obligations on a water service or repayment contract.* If a district has a water service or repayment contract in addition to an SRPA contract, Reclamation does not consider the SRPA loan:

(1) In determining whether the district has discharged its construction cost obligation for the project facilities;

(2) As a basis for reinstating acreage limitation provisions in a district that has completed payment of its construction cost obligation(s); or

(3) As a basis for increasing the construction obligation of the district and extending the period during which acreage limitation provisions will apply to that district.

(d) *Districts that have an SRPA loan contract and a contract as defined in § 426.2.* If a district has an SRPA loan contract and a contract as defined in § 426.2, the SRPA contract does not supersede the RRA requirements applicable to such contracts.

§ 426.18 Landholder information requirements.

(a) *Definition for purposes of this section:*

Irrigation season means the period of time between the district's first and last water delivery in any water year.

(b) *Who must provide information to Reclamation?* All landholders and other parties involved in the ownership or operation of nonexempt land must provide Reclamation, as required by these regulations or upon request, any records or information, in a form suitable to Reclamation, deemed reasonably necessary to implement the RRA or other provisions of Federal reclamation law.

(c) *Required form submissions.* (1) Landholders who are subject to the discretionary provisions must annually submit standard certification forms, except as provided in paragraph (l) of this section.

(2) Landholders who make an irrevocable election must submit the standard certification forms with their irrevocable election in the year that they make the election.

(3) Landholders who are subject to prior law must annually submit standard reporting forms, except as provided in paragraph (l) of this section.

(4) Landholders who qualify under an exemption as specified in paragraph (g) of this section need not submit any forms.

(d) *Required information.* Landholders must declare on the appropriate certification or reporting forms all nonexempt land that they hold directly or indirectly westwide and other information pertinent to their compliance with Federal reclamation law.

(e) *District receipt of forms and information.* Landholders must submit the appropriate, completed form(s) to each district in which they directly or indirectly hold irrigation land.

(f) *Certification or reporting forms for wholly owned subsidiaries.* The ultimate parent legal entity of a wholly owned subsidiary or of a series of wholly owned subsidiaries must file the required certification or reporting forms. The ultimate parent legal entity must disclose all direct and indirect landholdings of its subsidiaries as required on such forms.

(g) *Exemptions from submitting certification and reporting forms.* (1) A landholder is exempt from submitting the certification and reporting forms only if:

(i) The landholder's district has Category 1 status, as specified in paragraph (h) of this section, and the landholder is a:

(A) Qualified recipient who holds a total of 240 acres westwide or less; or

(B) Limited recipient or a prior law recipient who holds a total of 40 acres westwide or less.

(ii) The landholder's district has Category 2 status, as specified in paragraph (h) of this section, and the landholder is a:

(A) Qualified recipient who holds a total of 80 acres westwide or less; or

(B) Limited recipient or a prior law recipient who holds a total of 40 acres westwide or less.

(2) A wholly owned subsidiary is exempted from submitting certification or reporting forms, if its ultimate parent legal entity has properly filed such forms disclosing the landholdings of each of its subsidiaries.

(3) In determining whether certification or reporting is required for purposes of this section:

(i) Class 1 equivalency factors as determined in § 426.11 shall not be used; and

(ii) Indirect landholders need not count involuntarily acquired acreage designated as excess by the direct landowner.

(h) *District categorization.* (1) For purposes of this section each district has Category 2 status, unless the following criteria have been met. If the district has met both criteria, it will be granted Category 1 status.

(i) The district has conformed by contract to the discretionary provisions; and

(ii) The district is current in its financial obligations to Reclamation.

(2) Reclamation considers a district current in its financial obligation if as of September 30, the district is current in its:

(i) Financial obligations specified in its contract(s) with Reclamation; and

(ii) Payment obligations established by the RRA, and these rules.

(i) *Application of Category 1 status.* Once a district achieves Category 1 status, it will only be withdrawn if the Regional Director determines the district is not current in its financial obligations as specified in paragraph (h)(2) of this section. The withdrawal of Category 1 status will be effective at the end of the current water year and can be restored only as provided under paragraph (h) of this section. With the withdrawal of Category 1 status, the district will have a Category 2 status.

(j) *Submissions by landholders holding land in both a Category 1 district and a Category 2 district.* If a qualified recipient holds land in a Category 1 district, then the 240-acre forms threshold will be applicable in determining if the landholder must submit a certification form to that Category 1 district. If the same qualified recipient also holds land in a Category 2 district, then the 80-acre forms threshold will be applicable in determining if the landholder must submit a certification form to the Category 2 district.

(k) *Notification requirements for landholders whose ownership or leasing arrangements change after submitting forms.* If a landholder's ownership or leasing arrangements change in any way:

(1) During the irrigation season, the landholder must:

(i) Notify the district office, either verbally or in writing within 30-calendar days of the change; and

(ii) Submit new forms to all districts in which the landholder holds nonexempt land, within 60-calendar days of the change.

(2) Outside of the irrigation season, then the landholder must submit new standard certification or reporting forms to all districts in which nonexempt land is held prior to any irrigation water deliveries following such changes.

(l) *Notification requirements for landholders whose ownership or leasing arrangements have not changed.* If a landholder's ownership or leasing arrangements have not changed since last submitting a standard certification or reporting form, the landholder can satisfy the annual certification or reporting requirements by submitting a verification form instead of a standard form. On that form the landholder must verify that the information contained on the last submitted standard certification or reporting form remains accurate and complete.

(m) *Actions taken if required submission(s) is not made.*

(1) If a landholder does not submit required certification or reporting form(s), then:

(i) The district must not deliver, and the landholder is not eligible to receive and must not accept delivery of, irrigation water in any water year prior to submission of the required certification or reporting form(s) for that water year; and

(ii) Eligibility will be regained only after all required certification or reporting forms are submitted by the landholder to the district.

(2) If one or more part owners of a legal entity do not submit certification or reporting forms as required:

(i) The entire entity will be ineligible to receive irrigation water until such forms are submitted; or

(ii) If the documents forming the entity provide for the part owners' interest to be separable and alienable, then only that portion of the land attributable to the noncomplying part owners will be ineligible to receive irrigation water.

(n) *Actions taken by Reclamation if a landholder makes false statements on the appropriate certification or reporting forms.* If a landholder makes a false statement on the appropriate certification or reporting form(s) Reclamation can prosecute the landholder pursuant to the following statement which is included in all certification and reporting forms:

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the landowner or lessee will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

(o) *Information requirements and Office of Management and Budget approval.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned control numbers 1006–0005 and 1006–0006. The information is being collected to comply with Sections 206, 224(c), and 228 of the RRA. These sections require that, as a condition to the receipt of irrigation water, each landholder in a district which is subject to the acreage limitation provisions of Federal reclamation law, as amended and supplemented by the RRA, will furnish to his or her district annually a certificate/report which indicates that he or she is in compliance with the provisions of Federal reclamation law. Completion of these forms is required to obtain the benefit of irrigation water. The information collected on each landholding will be summarized by the district and submitted to Reclamation in a form prescribed by Reclamation.

(p) *Protection of forms pursuant to the Privacy Act of 1974.* The Privacy Act of 1974 (5 U.S.C. 552) protects the information submitted in accordance with certification and reporting requirements. As a condition to execution of a contract, Reclamation requires the inclusion of a standard contract article which provides for district compliance with the Privacy Act of 1974 and 43 CFR Part 2, Subpart D, in maintaining the landholder certification and reporting forms.

§ 426.19 District responsibilities.

A district that delivers irrigation water to nonexempt land under a contract with the United States must:

(a) Provide information to landholders concerning the requirements of Federal reclamation law and these regulations;

(b) Provide Reclamation, as required by these regulations or upon request, and in a form suitable to Reclamation, records and information as Reclamation may deem reasonably necessary to implement the RRA and other provisions of Federal reclamation law;

(c) Be responsible for payments to Reclamation of all appropriate charges specified in these regulations. Districts must collect the appropriate charges from each landholder based on the landholder's acreage limitation status, landholdings, and entitlements, and

must not average the costs over the entire district, unless the charges prove uncollectible from the responsible landholders;

(d) Distribute, collect, and review landholder certification and reporting forms;

(e) File and retain landholder certification and reporting forms. Districts must retain superseded landholder certification and reporting forms for 6 years; thereafter, districts may destroy such superseded forms, except:

(1) Districts must keep on file the last fully completed standard certification or reporting form, in addition to the current verification form; or

(2) If Reclamation specifically requests a district to retain superseded forms beyond 6 years.

(f) Comply with the requirements of the Privacy Act of 1974, with respect to landholder certification and reporting forms;

(g) Annually summarize information provided on landholder certification and reporting forms on separate summary forms provided by Reclamation and submit these forms to Reclamation on or before the date established by the appropriate regional director;

(h) Withhold deliveries of irrigation water to any landholder not eligible to receive irrigation water under the certification or reporting requirements or any other provision of Federal reclamation law and these regulations; and

(i) Return to Reclamation, for deposit as a general credit to the Reclamation fund, all revenues received from the delivery of water to ineligible land. For purposes of these regulations only, this does not include revenues from any charges that may be assessed by the district to cover district operation, maintenance, and administrative expenses.

§ 426.20 Assessment of administrative costs.

(a) *Assessment of administrative costs for delivery of water to ineligible land.* Reclamation will assess a district administrative costs as described in paragraph (e) of this section if the district delivers irrigation water to land that was ineligible because the landholders did not submit certification or reporting forms prior to the receipt of irrigation water in accordance with § 426.18; or to ineligible excess land as provided in § 426.12.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water in violation of § 426.18, or for each landholder that received irrigation water on ineligible land as specified above.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in paragraph (a) of this section will be applied independently of the assessment specified in paragraph (b) of this section.

(b) *Assessment of administrative costs when form corrections are not made.* Reclamation will assess a district for the administrative costs described in paragraph (e) of this section, unless the district provides Reclamation with requested reporting or certification form corrections within 60-calendar days of the date of Reclamation's written request. If Reclamation receives the required corrections within this 60-calendar day time period, Reclamation will consider the requirements of § 426.18 satisfied.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water and for whom the district does not provide corrected forms within the applicable 60-calendar day time period.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in paragraph (b) of this section will be applied independently of the assessment specified in paragraph (a) of this section.

(c) *Party responsible for paying assessments.* Districts are responsible for payment of Reclamation assessments described under paragraphs (a) and (b) of this section.

(d) *Disposition of assessments.* Reclamation will deposit to the general fund of the United States Treasury, as miscellaneous receipts, administrative costs assessed and collected under paragraphs (a) and (b) of this section.

(e) *Amount of the assessment.* The administrative costs assessment required under paragraphs (a) and (b) of this section is set at $260. Reclamation will review the associated costs at least once every 5 years, and will adjust the assessment amount, if needed, to reflect new cost data. Notice of the revised assessment for administrative costs will be published in the Federal Register in December of the year the data are reviewed.

§ 426.21 Interest on underpayments.

(a) *Definition of underpayment.* For the purposes of this section *underpayment* means the difference between what a landholder owed for the delivery of irrigation water under Federal reclamation law and what that landholder paid.

(b) *Collection of interest on underpayments.* If a landholder has incurred an underpayment, Reclamation will collect from the appropriate district such underpayment with interest. Interest accrues from the original payment due date until the district pays the amount due. The original payment due date is the date the district should have paid the United States for water delivered to the landholder.

(c) *Underpayment interest rate.* The Secretary of the Treasury determines the interest rate charged the district based on the weighted average yield of all interest-bearing marketable issues sold by the Department of the Treasury during the period of underpayment.

§ 426.22 Public participation.

(a) *Notification of contract actions.* Except for proposed contracts having a duration of 1 year or less for the sale of surplus water or interim irrigation water, Reclamation will:

(1) Provide notice of proposed irrigation or amendatory irrigation contract actions 60-calendar days prior to contract execution by publishing announcements in general circulation newspapers in the affected area;

(2) Issue announcements in the form of news releases, legal notices, official letters, memoranda, or other forms of written material; and

(3) Directly notify individuals and entities who made a timely written request for such notice to the appropriate Reclamation regional or local office.

(b) *Notification of modification of a proposed contract.* In the event that modifications are made to a proposed contract the regional director must:

(1) Provide copies of revised proposed contracts to all parties who requested copies of the proposed contract in response to the initial notice; and

(2) Determine whether or not to republish the notice or to extend the comment period. The regional director must consider, among other factors:

(i) The significance of the impact(s) of the modification to possible affected parties; and

(ii) The interest expressed by the public over the course of contract negotiations.

(c) *Information that Reclamation will include in published announcements.* Each published announcement will include, as appropriate:

(1) A brief description of the proposed contract terms and conditions being negotiated;

(2) Date, time, and place of meetings, workshops, or hearings;

(3) The address and telephone number to which inquiries and comments may be addressed to Reclamation; and

(4) The period of time during which Reclamation will accept comments.

(d) *Public availability of proposed contracts.* Anyone can get copies of a proposed contract from the appropriate regional director or his or her designated public contact when the proposed contracts become available for review and comment, as specified in the published announcement.

(e) *Opportunities for public participation.* (1) Reclamation can provide, as appropriate: meetings, workshops, or hearings to provide local information. Advance notice of meetings, workshops, or hearings will be provided to those parties who make timely written request for such notice. Request for notice of meetings, workshops, or hearings should be sent to the appropriate Reclamation regional or local office.

(2) Reclamation or the district can invite the public to observe any contract proceedings.

(3) All public participation procedures will be coordinated with those involved with National Environmental Policy Act compliance, if Reclamation determines that the contract action may or will have ''significant'' environmental effects.

(f) *Individuals authorized to negotiate the terms of contract proposals.* Only persons authorized to act on behalf of the district may negotiate the terms and conditions of a specific contract proposal.

(g) *Agency use of comments submitted during the period provided for comment or made at hearings.* (1) Reclamation will review and summarize for use by the contract approving authority, testimony presented at any public hearing or any written comments submitted to the appropriate Reclamation officials at locations and within the comment period, as specified in the advance published announcement.

(2) Reclamation will make available to the public all written correspondence regarding proposed contracts under the terms and procedures of the Freedom of Information Act (5 U.S.C. 552), as amended.

§ 426.23 Recovery of operation and maintenance (O&M) costs.

(a) *General.* All new, amended, and renewed contracts shall provide for payment of O&M costs as specified in this section.

(b) *Amount of O&M costs a district must pay if it executes a new or renewed contract.* If a district executes a new or renewed contract after October 12, 1982, then that district must pay all of the O&M costs that Reclamation allocates to irrigation.

(c) *Amount of O&M costs a district must pay if it amends its contract to conform to the discretionary provisions.* If a district has a contract executed prior to October 12, 1982, and the district amends the contract after October 12, 1982, as provided for in § 426.3(a)(2) to conform to the discretionary provisions, then the following applies:

(1) The district must pay all of the O&M costs that Reclamation allocates to irrigation;

(2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (c)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) The district will not be required to pay an increased amount toward the construction costs of a project as a condition of the district's agreeing to a contract amendment pursuant to paragraph (c) of this section.

(d) *Amount of O&M cost a district must pay if it amends its contract to provide supplemental or additional benefits.* If a district amends its contract after October 12, 1982, to provide supplemental or additional benefits, as provided for in § 426.3(a)(3), then the following must be complied with:

(1) The district must pay all of the O&M costs that Reclamation allocates to irrigation;

(2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (d)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) The district must pay any increases in the amount paid annually toward the construction costs of a project that the United States requires the district to pay as a condition of agreeing to provide the district with supplemental and additional benefits.

(e) *Amount of O&M a district pays under a prior contract.* For a district whose prior contract was executed prior to October 12, 1982, the district must pay all of the O&M costs allocated by Reclamation to irrigation unless the contract specifically provides contrary terms.

(f) *Amount of O&M that Reclamation charges an irrevocable elector.* (1) Regardless of any terms to the contrary within a prior contract with a district, a landholder who makes an irrevocable election, as provided for in § 426.3(f) must pay, annually, his or her proportionate share of all O&M costs allocated by Reclamation to irrigation. The irrevocable elector's proportionate share is based upon the ratio of:

(i) The amount of land in the district held by the irrevocable elector that received irrigation water to the total amount of land in the district that received irrigation water; or

(ii) The amount of irrigation water in the district received by the irrevocable elector to the total amount of irrigation water that the district delivered.

(2) The district(s) where the irrevocable elector's landholding is located must collect from the irrevocable elector an amount equal to the irrevocable elector's proportionate share of all O&M costs allocated by Reclamation to irrigation and the following apply:

(i) If in the year the election is executed, the district's contract rate was more than the O&M costs allocated to the district in that year, then that positive difference at the time of the contract amendment must continue to be factored into the contract rate. This would be in addition to any adjusted O&M cost that results from paragraph (f)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(ii) Such collections must be forwarded annually to the United States.

(g) *Amount of O&M that Reclamation charges if a landholder is subject to full-cost pricing.* In a district subject to prior law, if a landholder is subject to full-cost pricing the district must ensure that all O&M costs are included in any full-cost assessment, regardless of whether the landholder is subject to the discretionary provisions. The revenues from such full-cost assessments must be collected and submitted to the United States.

§ 426.24 Reclamation decisions and appeals.

(a) *Reclamation decisions.* (1) *Decisionmaker for Reclamation's final determinations.* The appropriate regional director makes any final determination that these regulations require or authorize. If Reclamation's final determination is likely to involve districts, or landholders with landholdings located in more than one region, the Commissioner designates one regional director to make that final determination.

(2) *Notice to affected parties.* The appropriate regional director will transmit any final determination to any district and landholder, as appropriate, whose rights and interests are directly affected.

(3) *Effective date for regional director's final determinations.* A regional director's decisions will take effect the day after the expiration of the period during which a person adversely affected may file a notice of appeal unless a petition for stay is filed together with a timely notice of appeal.

(b) *Appeal of final determinations.* (1) *Appeal Submittal.* Any district or landholder whose rights and interests are directly affected by a regional director's final determination can submit a written notice of appeal. Such notice of appeal must be submitted to the Commissioner of Reclamation within 30-calendar days from the date of the regional director's final determination.

(2) *Submittal of supporting information.* The affected party will have 60-calendar days from the date that the regional director issues a final determination to submit a supporting brief or memorandum to the Commissioner. The Commissioner may extend the time for submitting a supporting brief or memorandum, if:

(i) the affected party submits a request to the Commissioner in a timely manner;

(ii) the request includes the reason why additional time is needed; and

(iii) the Commissioner determines the appellant has shown good cause for such an extension and the extension would not prejudice Reclamation.

(3) *Requests for stay of the final determination pending appeal.* (i) The Commissioner will determine whether to stay a regional director's final determination within 30 days after receiving a properly filed petition for stay if the requesting party:

(A) submits a request for stay in writing to the Commissioner, with, or in advance of, the notice of appeal, and states the grounds upon which the party requests the stay; and

(B) Demonstrates that the harm that a district or landholder would suffer if the Commissioner does not grant the stay outweighs the interest of the United States in having the final determination take effect pending appeal.

(ii) A decision, or that portion of the decision, for which a stay is not granted will become effective immediately after the Commissioner denies or partially denies the petition for stay, or fails to act within 30 days after receiving the request.

(iii) A Commissioner's decision on a petition for a stay or any other Commissioner decision is appealable.

(c) *Appeal of Commissioner's decision.* (1) *Appeal to the Office of Hearing and Appeals.* A party can appeal the Commissioner's decision to the Secretary by writing to the Director, Office of Hearings and Appeals (OHA), U.S. Department of the Interior. For an appeal to be timely, OHA must receive the appeal within 30-calendar days from the date of mailing of the Commissioner's decision.

(2) *Rules that govern appeals to OHA.* 43 CFR Part 4, Subpart G, and other provisions of 43 CFR Part 4, where applicable, govern the OHA appeal process, except for the accrual of underpayment interest as specified in paragraph (e) of this section.

(d) *Effective date of an appeal decision.* Reclamation will apply decisions made by the Commissioner or by OHA under paragraphs (b) and (c) of this section as of the date of the violation or other problem that was addressed in the regional director's final determination. If, during the appeal process, irrigation water has been delivered to land subsequently found to be ineligible, for other than RRA forms submittal violations, the compensation rate may be applied to such deliveries retroactively.

(e) *Accrual of interest on underpayments during appeal.* Interest on any underpayments, as provided in § 426.21, continues to accrue during an appeal of a regional director's final determination, an appeal of the Commissioner's decision, or judicial review of final agency action. Underpayment interest accrual will continue even during a stay under paragraphs (b)(4) or (c)(3) of this section.

(f) *Status of appeals made prior to the effective date of these regulations.* (1) Appeals to the Commissioner of a regional director's final determination which were decided by the Commissioner or his or her delegate prior to the effective date of these regulations are hereby validated.

(2) Appeals to the Commissioner of final determinations made by a regional director and appeals to OHA, which are pending on appeal as of the effective date of these regulations will be processed and decided in accordance with the regulations in effect immediately prior to the effective date of these regulations.

(g) *Addresses.* All requests for stays, appeals, or other communications to the United States under this section must be addressed as follows:

(1) *Commissioner,* Bureau of Reclamation, 1849 C Street N.W., MS–7060–MIB, Washington, D.C. 20240, telephone (202) 208–4157.

(2) *Director, Office of Hearings and Appeals,* Department of the Interior; 4015 Wilson Boulevard, Room 1103; Ballston Tower No. 3; Arlington, VA 22203.

§ 426.25 Reclamation audits.

Reclamation will conduct reviews of a district's administration and enforcement of and landholder compliance with Federal reclamation law and these regulations. These reviews may include, but are not limited to:

(a) Water district reviews;

(b) In-depth reviews; and

(c) Audits.

§ 426.26 Severability.

If any provision of these regulations or the application of these rules to any person or circumstance is held invalid, then the sections of these rules or their applications which are not held invalid will not be affected.

2. Part 427 is added as follows:

PART 427—WATER CONSERVATION RULES AND REGULATIONS

§ 427.1 Water conservation.

(a) *In general.* The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-Federal recipients of irrigation and municipal and industrial (M&I) water from Federal Reclamation projects.

(b) *Development of a plan.* Districts that have entered into repayment contracts or water service contracts according to Federal reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop and submit to the Bureau of Reclamation a water conservation plan which contains definite objectives which are economically feasible and a time schedule for meeting those objectives. In the event the contractor also has provisions for the supply of M&I water under the authority of the

Water Supply Act of 1958 or has invoked a provision of that act, the water conservation plan shall address both the irrigation and M&I water supply activities.

(c) *Federal assistance.* The Bureau of Reclamation will cooperate with the district, to the extent possible, in studies to identify opportunities to augment, utilize, or conserve the available water supply.

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590y *et seq.*; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390b, 43 U.S.C. 390jj, 43 U.S.C. 422a *et seq.*, and 43 U.S.C. 523.

Amendments Effective January 1, 1997

PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

1. The authority citation for part 426 continues to read as follows:

Authority: Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, title II, 96 Stat. 1263; as amended by the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; and the Reclamation Act of 1902, as amended and supplemented 32 Stat. 388, (43 U.S.C. 371 *et seq.*).

2. Effective January 1, 1997, § 426.10 is amended by removing and reserving paragraph (g) and adding paragraphs (n) through (q) to read as follows:

§ 426.10 Information requirements.

* * * * *

(n) *Exemptions from submitting certification and reporting forms.* (1) A landholder is exempt from submitting the certification and reporting forms only if:

(i) The landholder's district has Category 1 status, as specified in paragraph (o) of this section, and the landholder is a:

(A) Qualified recipient who holds a total of 240 acres westwide or less; or

(B) Limited recipient or a prior law recipient who holds a total of 40 acres westwide or less.

(ii) The landholder's district has Category 2 status, as specified in paragraph (o) of this section, and the landholder is a:

(A) Qualified recipient who holds a total of 80 acres westwide or less; or

(B) Limited recipient or a prior law recipient who holds a total or 40 acres westwide or less.

(2) A wholly owned subsidiary is exempted from submitting certification or reporting forms, if its ultimate parent legal entity has properly filed such forms disclosing the landholdings of each of its subsidiaries.

(3) In determining whether certification or reporting is required for purposes of this section:

(i) Class 1 equivalency factors as determined in § 426.11 shall not be used; and

(ii) Indirect landholders need not count involuntarily acquired acreage designated as excess by the direct landowner.

(o) *District categorization.* For purposes of this section each district has Category 2 status, unless the following criteria have been met. If the district has met both criteria, it will be granted Category 1 status.

(i) The district has conformed by contract to the discretionary provisions; and

(ii) The district is current in its financial obligations to Reclamation.

(2) Reclamation considers a district current in its financial obligation if as of September 30, the district is current in its:

(i) Financial obligations specified in its contract(s) with Reclamation; and

(ii) Payment obligations established by the RRA, and these rules.

(p) *Application of Category 1 status.* Once a district achieves Category 1 status, it will not be withdrawn unless the Regional Director determines the district is not current in its financial obligations as specified in paragraph (o)(2) of this section. The withdrawal of Category 1 status will be effective at the end of the current water year and can be restored only as provided under paragraph (o) of this section. With the withdrawal of Category 1 status, the district will have a Category 2 status with the associated 80-acre RRA forms submittal exemption for qualified recipients.

(q) *Submissions by landholders holding land in both a Category 1 district and a Category 2 district.* If a qualified recipient holds land in a Category 1 district, then the 240-acre forms threshold will be applicable in determining if the landholder must submit a certification form to that Category 1 district. If the same qualified recipient also holds land in a Category 2 district, then the 80-acre forms threshold will be applicable in determining if the landholder must submit a certification form to the Category 2 district.

§ 426.10 [Amended]

3. Effective January 1, 1997, in § 426.10(e), the reference to ''paragraphs (f) and (g) of this section'' is revised to read ''paragraphs (f) and (n) of this section.''

[FR Doc. 96–31904 Filed 12–13–96; 10:31 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

RIN 1006–AA38

Acreage Limitation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking requests public comment on possible revisions to existing rules and regulations regarding acreage limitation provisions of the Reclamation Reform Act of 1982 (RRA). During the recently completed RRA rulemaking published in today's Federal Register, the Department of the Interior (Department) received a number of comments regarding the compliance of certain large trusts with the acreage limitation provisions of the RRA. Comments expressed a variety of viewpoints, including the assertion that some trusts with landholdings (owned or leased land) in excess of 960 acres may circumvent the requirements of Federal reclamation law. The Department seeks comment on this issue as specified below. In addition, the Department also hopes to obtain the views of interested parties on the extent of the Department's statutory authority to address matters described below.

DATES: Written comments on this advance notice of proposed rulemaking must be received by the Bureau of Reclamation by March 18, 1997.

ADDRESSES: Mail written comments to the Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Steven Richardson, Bureau of Reclamation, Mail Code W–1500, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–4291.

SUPPLEMENTARY INFORMATION:

Background

The RRA modernized Federal reclamation law, while retaining the principle of limiting the benefits of receiving federally subsidized water to farmers with relatively small landholdings. The RRA adjusted the acreage limitations for farms eligible to receive subsidized water. This change was intended to facilitate modern farming practices and to limit nonfull-cost water deliveries generally to landholdings of 960 acres or less, rather than the 160 acres established by the Reclamation Act of 1902. The RRA provides a number of exceptions to the 960-acre limitation. One of these, section 214 of the RRA, provides that the acreage limitation provisions do not apply to lands held in trust, if certain criteria are met.

In 1983, the Bureau of Reclamation (Reclamation) adopted rules implementing the RRA's trust provisions (43 CFR Part 426). The 1987 rules required that trust agreements must: (a) be in writing, (b) be approved by the Secretary of the Interior, (c) identify the beneficiaries, and (d) describe the interest of the beneficiaries. In December 1988, the rules were again revised to incorporate amendments to the RRA contained in the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). These amendments addressed treatment of revocable trusts, among other issues.

Under current Reclamation policy, Reclamation generally attributes land held by a trust to the beneficiaries of that trust. For example, the current regulations permit large landholdings in excess of 960 acres held in trust to be operated as one farm and to receive nonfull-cost water as long as no beneficiaries to whom land has been attributed exceed their acreage limitations. Current regulations do not distinguish between family, financial institution, and estate planning trusts on the one hand, and certain other large trusts created after 1982 that appear to some to be designed specifically to avoid the acreage limitation provisions of Federal reclamation law.

The Department published in the Federal Register on April 3, 1995, (63 FR 16922, Apr. 3, 1995) a notice of proposed rulemaking on the acreage limitation provisions and received hundreds of comments from the public. The final rule on acreage limitations (43 CFR Part 426) is published in today's Federal Register. This final rule makes no substantive change in the treatment of trusts.

The proposed rule sought to address outstanding concerns raised by some members of the public regarding compliance by large trusts with the acreage limitation requirements of the RRA and other as yet unregulated forms of land holding. The proposed rule would have amended the definition of what constitutes a lease for purposes of the acreage limitation requirements of the RRA. Reclamation treats large farm operations as leases, subject to the acreage limitation requirements, if the operator assumes the economic risk of the farming enterprise and has use or possession of the land. By contrast, the proposed rulemaking focused on possession of the land. Under that proposed change, if someone other than the landowner had possession of the land, then Reclamation would determine that a lease subject to the acreage limitation provisions existed regardless of whether that person or entity also assumed the economic risk. One of the effects of the proposed rule may have been to treat certain operators of land held in trust as lessees.

Based upon comments on the proposed rulemaking, Reclamation has determined that the proposed provision altering the definition of a lease is an inadequate means of addressing the concerns about compliance with the acreage limitation provisions of the RRA and could have produced unintended consequences. Many comments from the public raised concerns about the effects of such a change on custom service providers, specialty services, and lenders among others. Still others noted that the proposed change could be easily avoided. Given the widely divergent views and the complexity of this issue, this advance notice of proposed rulemaking seeks further public comment on the matter.

Summary of Proposal

The treatment of trusts under the RRA can significantly affect how much acreage in a given farming arrangement is eligible for nonfull-cost water. Many family farms, trust departments of financial institutions, and others use trusts for estate planning and other purposes unrelated to acreage limitations. Section 214 of the RRA, contemplating these legitimate trust purposes, provides that lands held in trust and meeting certain criteria are not subject to acreage limitations. Thus such trusts are eligible to receive nonfull-cost water from Reclamation projects. Following the enactment of the RRA, however, some holders of large farms created trusts, transferred their landholdings to those trusts, and continued to receive nonfull-cost water without regard to the traditional purposes for trusts that Congress may have contemplated in adopting section 214.

Reclamation's comprehensive February 1991 review of RRA implementation contains the most recently published data on administration and enforcement of RRA through 1990. According to this review, out of a total of 550 trust arrangements, only 35 trusts (primarily in California, Arizona, and Washington) held more than 960 acres. Thus, the vast majority of the 550 trusts were found to be well within the RRA's acreage limitations.

To address the issue of large trusts in excess of 960 acres that may circumvent acreage limitations, the Department invites comments and suggestions on:

- Whether to limit nonfull-cost water deliveries to large trusts with landholdings in excess of 960 acres (or other applicable acreage thresholds under the RRA);
- The criteria used to determine whether landholdings in excess of 960 acres, operated under a trust arrangement, should be eligible to receive nonfull-cost water deliveries;
- Whether nonfull-cost water deliveries to such landholdings are consistent with the principles of Federal reclamation law and sound public policy and, if not, how to implement a limit on such deliveries;
- What procedures might ensure fairness in transition to new rules that would limit large trusts to 960 acres for nonfull-cost water, and what safeguards would be necessary to avoid such trusts from adopting some other,as yet unregulated form, to escape acreage limitations; and
- The extent of the Department's statutory authority to address these issues, including, the extent of the Department's legal authority to regulate: (a) future trusts, (b) trusts established from 1982 to the present, and (c) trusts established prior to 1982.

By seeking public comment, Interior hopes to receive input and suggestions that will better enable the Department to ensure compliance wit the acreage limitation provisions by large trusts and other forms of landholdings in excess of 960 acres.

Dated: December 11, 1996.

Patricia J. Beneke,

Assistant Secretary, Water and Science.

[FR Doc. 96–31905 Filed 12–13–96; 10:31 am]

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Federal Register

Wednesday
December 18, 1996

Part III

Office of Government Ethics

5 CFR Part 2640

Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest); Final Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule describing circumstances under which the prohibitions contained in 18 U.S.C. 208(a) would be waived. Section 208(a) prohibits employees of the executive branch from participating in an official capacity in particular matters in which they, or certain persons or entities with whom they have specified relationships, have a financial interest. Section 208(b) of title 18 permits waivers of these prohibitions in certain cases. First, section 208(b)(1) permits agencies to exempt employees on a case-by-case basis from the disqualification provisions of section 208(a). Similarly, section 208(b)(3) permits agencies to waive, in certain cases, the disqualification requirement that would apply to special Government employees serving on a Federal advisory committee. Finally, under section 208(b)(2), the Office of Government Ethics has the authority to promulgate executive branchwide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a). This final regulation describes those financial interests. It also provides guidance to agencies on the factors to consider when issuing individual waivers under section 208 (b)(1) or (b)(3).

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Glynn, Office of Government Ethics, telephone: 202–208–8000, TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

On September 11, 1995, the Office of Government Ethics (OGE) published for comment a proposed rule to establish exemptions under 18 U.S.C. 208(b)(2) from the prohibition in the conflict of interest statute at section 208(a). See 60 FR 47208–47233 (part II of the September 11, 1995 daily FR issue). In part, the proposed rule also provided guidance to agencies on issuing individual waivers of the conflict of interest prohibition under 18 U.S.C. 208(b)(1) and (b)(3), and on interpreting section 208 generally.

The proposed rule was issued pursuant to 18 U.S.C. 208(d)(2) which directs OGE, after consultation with the Attorney General, to adopt uniform regulations exempting financial interests from the applicability of section 208(a) for all or a portion of the executive branch, and to provide guidance on the types of interests that may be waived on an individual basis. Prior to 1989, the authority to promulgate regulations implementing the previous version of section 208(b)(2) resided in the individual agencies as to their own respective employees. However, the Ethics Reform Act of 1989 (Pub. L. No. 101–194), as amended, amended 18 U.S.C. 208 to eliminate the authority of individual agencies to adopt agencywide regulatory exemptions and granted branchwide authority to OGE.

The Office of Government Ethics also published an interim rule on August 28, 1995 which established a single exemption under 18 U.S.C. 208(b)(2) for financial interests that arise from Federal Government salary and benefits or from Social Security or veterans' benefits. See 60 FR 44706–44709 (part IX of the August 28, 1995 daily FR issue). The interim rule, which became effective on the date of publication, was codified at that time at 5 CFR 2640.101. However, the exemption in the interim rule was also republished for consideration as part of the proposed rule at 5 CFR 2640.203(d) published on September 11, 1995. This single exemption is recodified in this final rule at 5 CFR 2640.203(d). Comments received on the interim rule were consolidated with, and considered along with comments received on the proposed rule.

The proposed rule and the interim rule each provided a 60-day comment period and invited comments by agencies and the public. Timely comments were received from 25 sources. After carefully considering all comments and making appropriate modifications, the Office of Government Ethics is publishing this final rule after consultation with the Office of Personnel Management and, pursuant to section 201(c) of Executive Order 12674, as modified by E.O. 12731, after obtaining the concurrence of the Department of Justice.

II. Summary of Comments

All of the comments received were from executive branch Departments and agencies, including two from agency Inspectors General. Many commented on several different sections of the proposed rule. The Office of Government Ethics has considered each comment submitted by each commenter and those determined to be significant are discussed below in the context of the particular subparts or sections to which they pertain. We have not specifically discussed comments that were either generally laudatory or generally critical, either of style or of substantive content, or that offered editorial suggestions or suggestions regarding format that would not affect meaning. In addition, we have not specifically discussed comments that were plainly unreasonable or that exhibited a clear misunderstanding of the purpose or language of the proposed regulation or of section 208. The following comments fall within these latter categories: assertions that certain types of interests (such as Government securities) do not raise section 208 implications for any Government employees; statements that certain exemptions insult Federal employees by suggesting that performance of official duties could violate a criminal law; and statements that section 208 applies only to particular matters involving specific parties. We have also not addressed comments that have been rendered inapplicable by changes to the regulation which have been made for other reasons, or that merely recommended revisions to examples describing agency programs. Finally, we have not addressed comments that call for a discussion of section 208 generally, but that are not related to any particular provision of the regulation.

A number of commenters were generally satisfied with the approach taken in the proposed rule in describing the exemptions. Most of these commenters indicated that the rule as proposed would resolve some long-standing issues and that it would address most of the situations in which agencies have been routinely issuing waivers under section 208(b)(1) or (b)(3). A fewer number of commenters were generally critical of the rule, citing its complexity and its attempt to devise exemptions that apply in situations that do not concern a majority of executive branch employees. To address these concerns, some of the exemptions were rewritten to simplify language. For example, in certain provisions, the term ''direct or beneficial ownership'' was deleted and replaced simply with the term ''ownership.'' In other exemptions, the term ''any particular matter, whether of general applicability or involving specific parties,'' was replaced with the term ''any particular matter.'' Changes

of this type have been made to make the rule easier to understand, and are not intended to change a provision's substantive meaning from that proposed.

In addition, a few proposed exemptions were eliminated to reduce the rule's complexity. The deleted exemptions would have been generally difficult to interpret and apply and did not appear to be relevant to a majority of employees. Each of these exemptions is discussed under the relevant subpart below.

Certain other proposed exemptions were retained in this final rule even though they are not relevant to a large number of employees. Because individual agencies no longer have authority to issue their own exemptions, this exemption rule, where possible, must address conflicts issues that affect employees of only a few agencies.

Finally, OGE, in adopting this final rule, has corrected a few typographical errors and made a few other minor clarifying revisions to the rule as proposed.

General Comments

Some agencies made suggestions, or raised issues, about matters that did not concern any specific subpart or provision of the regulation. One agency recommended that the rule address when, or under what circumstances, an employee may engage in transactions (such as buying or selling stock) involving a financial interest upon which a particular agency matter will have a direct and predictable effect. The Office of Government Ethics has not made any change in the regulation to address this comment. Each exemption applies whether or not an employee is engaged in a transaction that would involve a financial interest affected by an agency matter in which the employee is participating.

Another agency suggested that the Preamble accompanying the proposed rule be preserved as part of the final regulation and incorporated into the text of the regulation as published in the Code of Federal Regulations. The Office of Government Ethics has not adopted this suggestion since it would be inappropriate to incorporate narrative explanations of a rule into the text of the rule itself. However, agency ethics officials and others are free to consult the Preamble of the proposed rule when interpreting section 208.

One agency asked OGE to explain how the exemptions are intended to ''mesh'' with one another. The regulation permits an employee to apply or utilize all the exemptions that might be applicable in a particular situation. Thus, for example, an employee might be called upon to act in a particular matter affecting a certain company. He could act in the matter even if: (1) He owns $4,000 worth of stock in the company; (2) he owns two diversified mutual funds that are invested in the company; and (3) his general partner owns $100,000 worth of stock in the company.

The Office of Government Ethics did not adopt one agency's suggestion to add a provision clarifying that the impartiality provisions in subpart E of the Standards of Ethical Conduct for Employees of the Executive Branch may be applied even when a regulatory exemption is applicable under this regulation. As the note in 5 CFR 2635.501(b) indicates, the granting of a statutory waiver constitutes a determination that ''the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.''

Finally, one agency requested that the final rule become effective no sooner than three months after the date of publication so the agency has adequate time to inform employees of the rule's existence and to conduct training for employees. The Office of Government Ethics does not agree that the rule needs a three-month effective date. Agency programs and operations will not be harmed if employees are unaware of the rule's existence on the date it becomes effective. Employees who have not yet been informed of the exemptions that are applicable to them will simply continue to disqualify themselves from matters affecting their financial interests until they are advised of the rule's provisions. And, in any case, agencies will no doubt apprise their employees promptly of the final rule once it becomes effective.

Subpart A—General Provisions

Section 2640.102 Definitions

One agency objected to proposed definitions that cross-reference statutes unrelated to ethics considerations. The agency recommended keeping each definition self-contained so that employees do not have to consult other sources to determine if an exemption applies. The Office of Government Ethics has not adopted this recommendation. Reiterating the text of the cross-referenced statutes would complicate and lengthen the regulation considerably. On the other hand, paraphrasing the language of the statutes might create ambiguity about the meaning of certain definitions. Because this regulation establishes exemptions from a criminal statute, the exemptions need to be described with specificity.

An agency stated that the term ''institution of higher education'' did not need to be defined at § 2640.102(g) as renumbered because it has a commonly-understood meaning. The Office of Government Ethics disagrees. The exemptions relating to such institutions (§ 2640.203 (b) and (c)) are intended to apply in the case of colleges and universities, and other similar post-secondary institutions. Not all post-secondary institutions are encompassed by the definition referenced at § 2640.102(g). For example, profit-making post-secondary institutions are not included in the definition of ''institution of higher education'' at 20 U.S.C. 1141(a).

No changes have been made in this final regulation to address a concern expressed by one agency that the definition of ''publicly traded security'' at § 2640.102(p) as proposed inadvertently excludes securities issued by Government entities such as the Government National Mortgage Association. Most executive branch employees would not have a disqualifying financial interest in Government securities. In the case of employees who do have a disqualifying financial interest, however, the Office of Government Ethics could not determine that a regulatory exemption applicable to every such employee would be appropriate.

Technical corrections have been made to the proposed definitions of ''long-term Federal Government security'' and ''short-term Federal Government security'' at § 2640.102(i), as renumbered and § 2640.102(s). In addition, changes have been made in the proposed definition of the term ''diversification'' to reflect changes made in the exemptions at § 2640.201, discussed below. Finally, the term ''unit investment trust'' at renumbered § 2640.102(u) also has been revised to accommodate changes made in the definition of the term ''diversification.'' The revision, however, does not change the substantive meaning of the term ''unit investment trust.''

Section 2640.103 Prohibition

Two agencies questioned why the exemptions were not proposed to be added to 5 CFR 2635.402 of the Standards of Ethical Conduct for Employees of the Executive Branch, and why language from that provision is repeated in the exemption rule. The Office of Government Ethics considered consolidating the exemptions and

interpretations of section 208 in either part 2635 or part 2640. However, changes could not be made to part 2635 without significantly altering the integrity of that part. On the other hand, the language of § 2635.402 could not be repeated verbatim in part 2640 since much of it deals with the implementation of other parts of the Standards of Ethical Conduct. Accordingly, OGE decided to repeat in part 2640 as proposed and, as issued as a final rule in this rulemaking document, those parts of § 2635.402 that are relevant to the overall implementation of section 208. Where language between the two provisions varies, no differences in interpretation are intended. However, OGE intends to review the text of § 2635.402 to determine whether any language is substantively inconsistent with part 2640 and make any appropriate modifications.

One agency criticized OGE for describing in the proposed rule certain particular matters as ''particular matters of general applicability'' and stated that use of the term would needlessly confuse employees. On the other hand, the agency agreed that the term ''particular matters involving specific parties'' is an established and useful concept. Another agency stated that different exemptions for different types of matters (i.e. those involving parties and those without parties) are unnecessary. The Office of Government Ethics believes that, in certain circumstances, different exemptions are warranted for matters that do not involve specific parties. Agencies currently take these distinctions into account when issuing individual waivers under section 208(b)(1), and it is reasonable to establish somewhat broader regulatory exemptions for nonparty particular matters. To address concerns about the meaning of the term particular matter of general applicability, OGE has added a definition, at § 2640.102(m) of this final rule, describing such matters as those which are focused on the interests of a discrete and identifiable class of persons, but do not involve specific parties.

One agency noted that it has identified certain classes of matters that are not particular matters because they are not sufficiently focused on the interests of a discrete and identifiable class of persons, even though the matters may have some collateral effect on identified persons. The agency asked that OGE identify other matters that are not focused enough to be considered particular matters. In the absence of specific facts, OGE is unable to identify such matters. For example, although the agency asserted that basic research is not a particular matter, OGE believes that a grant to a university to conduct such research is a particular matter. Without sufficient specificity of this type, it would be misleading to state conclusively that certain Government activities or operations are not particular matters.

Several agencies commented on the examples in proposed § 2640.103 that illustrate various terms in section 208. One agency stated that Example 8 following § 2640.103(a)(1) incorrectly suggests that legislation can never constitute a particular matter; another suggested that a certain provision dealing with charges for prescription drugs that is in a larger piece of health care legislation is not a particular matter because it affects everyone in the United States. The Office of Government Ethics does not disagree that some legislation is narrowly focused on the interests of a discrete and identifiable class of persons, and would therefore be a particular matter. For example, where a particular provision in a larger piece of legislation focuses specifically on the regulation of prescription drug prices, the provision is focused on the interests of pharmaceutical companies, physicians, and pharmacies and would thus constitute a particular matter.

One agency asked that OGE revise Example 2, and eliminate Example 3, following § 2640.103(a)(3) as proposed. Because the requested revision would change the concept Example 2 was intended to illustrate, the Office of Government Ethics did not adopt this suggestion. For similar reasons, OGE did not eliminate Example 3. Although the commenting agency stated that the situation depicted in the example is not wholly realistic, OGE believes the example provides a reasonable illustration of the meaning of the term ''direct and predictable effect.'' At the suggestion of another agency, OGE revised Example 4 following § 2640.103(a)(3) to more clearly illustrate the concept that section 208 applies when the Government matter has a direct and predictable effect on the employee's financial interest.

The Office of Government Ethics did not adopt one agency's request that the regulation define the term ''general partner.'' The term ''general partner'' does not have a special or unique meaning for purposes of section 208. The term has a generally accepted meaning within the area of partnership law.

Finally, one agency suggested that OGE revise proposed § 2640.103(e) to include a statement noting that resignation from an outside position can end a disqualifying financial interest. The Office of Government Ethics has not revised the provision in this final rule because the current language of § 2640.103(e) encompasses divestiture of ''other interest[s]'' that cause disqualification from participation in a particular matter.

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

Section 2640.201 Exemptions for Interests in Mutual Funds, Unit Investment Trusts, and Employee Benefit Plans

Common Trust Funds

As proposed, the regulation at § 2640.201(a) contained an exemption for diversified common trust funds. The term ''diversified'' was defined in reference to a regulation of the Office of the Comptroller of the Currency, 12 CFR 9.18, which required common trust funds maintained by State or national banks to be diversified. On December 21, 1995, the Office of the Comptroller of the Currency (OCC) published a proposed rule that would eliminate the diversification requirement for common trust funds. *See* 60 FR 66163, 66170. The Preamble to the proposed rule states that the ''* * * restrictions have at times interfered with optimal management of common trust funds * * *.'' *Id.* at 66170. If the revised regulation OCC becomes effective, there will no longer be any assurance that common trust funds will contain any particular number or types of assets. In the absence of any other standardized way of determining whether such funds will be even minimally diversified, the Office of Government Ethics cannot conclude, as a regulatory matter, that an employee's interest arising from a fund will be remote and inconsequential. Accordingly, the exemption for common trust funds has been deleted from this final rule.

Diversified Mutual Funds

Four agencies stated that the exemption for diversified mutual funds proposed at § 2640.201(a) was too complicated for the average employee to apply or for ethics officials to implement. As proposed, the exemption would have applied to mutual funds that are diversified management companies as defined in the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1). Of the four commenters, one recommended simply leaving the term ''diversified'' undefined; the second advocated dropping any diversification requirement; the third recommended linking the definition of diversification

to sector mutual funds; and the fourth recommended that the exemption apply simply to publicly traded mutual funds.

Six agencies expressed particular concern that the proposed definition of diversified mutual fund (as well as the definition for diversified common trust fund, unit investment trust, and employee benefit plan) would not be consistent with the definition of Excepted Investment Fund (EIF), as that term is used for purposes of financial reporting. These agencies expressed the view that employees would be confused and frustrated by dealing with different definitions of diversification. Three of the agencies suggested that we modify EIF reporting requirements to make them consistent with the diversification standards in the exemption rule. Another agency suggested that the EIF standards be adopted in the exemption rule, while a third agency expressed no preference for either approach as long as the standards would be made consistent.

Based on these concerns, the Office of Government Ethics has decided to revise the definition of ''diversified'' as that term is used in § 2640.201(a) in connection with mutual funds. Accordingly, the term ''diversified'' in § 2640.102(b) of this final rule now states that ''diversified means that the fund * * * does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States.'' In other words, the exemption for diversified mutual funds applies to all mutual funds except sector funds. An agency employee or ethics official can determine if a fund is a sector fund by reading the prospectus, or by calling a broker or fund manager. Often, it is possible to learn whether a fund is a sector fund simply from the fund's name (i.e. Vanguard Specialized Portfolios: Healthcare). In any event, a fund's concentration policy, if any, is required under Securities and Exchange Commission (SEC) regulations to be described in the prospectus.

The Office of Government Ethics has not, however, revised the definition of the term ''mutual fund'' as proposed at § 2640.102(l) and which is now in renumbered § 2640.102(k)). In order for the exemption to apply, the mutual fund must still be a true fund, i.e. a management company registered under the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.* Informal collections of stocks, bonds and similar holdings, such as family trusts, are not mutual funds because they are not registered management companies.

The Office of Government Ethics has not adopted recommendations to make the definition of the term diversified mutual fund the same as the definition of Excepted Investment Fund (EIF) as that term is used in 5 CFR 2634.310(c) for purposes of financial reporting. As explained in the Preamble to the proposed rule, using the numerical standards of the EIF definition (no more than 5% of a fund's portfolio invested in any one issuer nor more than 20% in any particular economic or geographic sector) would be impractical and burdensome because mutual fund assets continuously change and because employee participation in particular matters typically occurs on continuing basis over time. Use of a numerical standard is not a problem for purposes of financial reporting because whether an asset is an EIF for those purposes is a determination that must be made only once a year. And, relying on the alternative definition of the term Excepted Investment Fund (i.e. that the fund is publicly traded) does not advance conflicts of interest concerns because publicly traded assets may still raise questions about conflicts of interest. The Office of Government Ethics has not yet determined whether it will seek to revise the definition of Excepted Investment Fund to correspond with the term diversified mutual fund as it is used in this regulation. Any such revision might require Congressional action, since the standards for determining whether a widely held investment fund is an Excepted Investment Fund are statutory. *See* 5 U.S.C. app., section 102(f)(8) of the Ethics in Government Act.

Two agencies objected to the fact that the exemption for diversified mutual funds was proposed to apply to employees of all agencies. One agency recommended that the rule permit individual agencies to decide whether to allow employees of their agencies to apply the mutual fund exemption. The other agency suggested that it be allowed to limit applicability of the exemption where the fund is an international regional fund (e.g. the Pacific Basin Fund) and the employee has duties focused on the region in question. The Office of Government Ethics has not revised § 2640.201(b) in this final rule in response to these comments. OGE believes it is inappropriate to permit certain agencies to limit the applicability of these exemptions. The exemptions are devised with the assumption that the financial interests described are ''remote or inconsequential'' in the case of all executive branch employees. Of course, particular agencies might want to consider whether they wish to prohibit the holding of certain sector funds by employees in their agency supplemental standards of ethical conduct regulations. See 5 CFR 2635.105.

Sector Mutual Funds

Six agencies commented on various aspects of § 2640.201(b) of the proposed rule dealing with sector mutual funds. Of these, one agency specifically endorsed the definition of ''sector mutual fund'' as that term is used in proposed § 2640.201(b). Another agency, however, characterized the proposed definition as too imprecise, and appeared to recommend that OGE devise a numerical standard for determining whether a fund concentrates in a particular sector. The Office of Government Ethics did not adopt this suggestion. Because fund managers often buy and sell holdings on a daily basis, it would be practically impossible for employees to determine the composition of a particular fund with any certainty on a particular date. Moreover, determining whether a fund meets the present definition of sector mutual fund should be less burdensome for employees because it does not require them to undertake any numerical calculations. Employees simply have to determine whether the fund has a policy of concentration. As discussed above, SEC regulations require a mutual fund manager to disclose such a policy, if any, in the fund's prospectus.

Two other agencies stated that sector mutual funds should be totally exempt from the prohibition in section 208. These agencies argued that the proposed exemption for sector funds is too difficult to administer and would effectively bar employees from investing in sector funds with holdings related to the activities of their agencies. Both agencies theorized that other agencies that disagreed with their proposed approach could simply bar employees, in their agency supplemental standards regulations, from holding sector funds. The Office of Government Ethics has not adopted these recommendations, since OGE cannot reasonably determine that the interests of every executive branch employee in the holdings of a sector mutual fund are remote and inconsequential for every particular matter in which he or she might participate. For example, an employee of an executive branch agency who invests in an energy-related sector fund might direct his staff to draft a regulation rescinding certain requirements relating to the disposal of hazardous waste materials. The effect of

the new regulation would be to significantly reduce outlays that utility companies have to make to comply with regulatory requirements. As a result, the companies' profits would increase, and the corresponding value of funds that invest in the companies would also increase. Under these circumstances, OGE could not say that the employee's interest would be remote or inconsequential. Of course, the section 208 issue would not arise if the holding was prohibited by an agency supplemental regulation. However, OGE cannot compel agencies to adopt, in their supplemental agency standards regulations, prohibitions on holding sector mutual funds. Moreover, many agencies do not choose to issue supplemental standards.

Employee Benefit Plans

A few agencies submitted comments on the proposed exemption for employee benefits plans at § 2640.201(c). The Office of Government Ethics did not adopt one agency's suggestion that the requirement for an independent trustee in § 2640.201(c)(1)(iii)(A) as proposed be eliminated. The Office of Government Ethics believes that a plan's trustee should be independent of the plan's sponsor, or at least be a registered investment advisor, to insure that investment selections are made without regard to the plan sponsor's relationship with the employee.

Two agencies objected to the inclusion of the Thrift Savings Plan for Federal employees in the list of employee benefit plans covered by the exemption at proposed § 2640.201(c). One of the agencies stated that the class of persons affected by a matter which involves the Thrift Plan is so large that any such matter could not be considered a particular matter. The Office of Government Ethics does not agree with this view. Employees who have invested in the Thrift Savings Plan are a discrete and identifiable class of persons for purposes of section 208. The agency alternatively argued, as did one other agency, that the Thrift Plan would be covered by the exemption for interests arising from Government salary and benefits at § 2640.203(d) as proposed. While OGE does not disagree that the Thrift Plan would be covered by the exemption at § 2640.203(d), to avoid any misunderstanding, OGE has not revised the regulation in this regard in adopting it as final. In particular, since the exemption at § 2640.201(c)(1)(i) applies specifically to the underlying holdings of the Thrift Plan, OGE would prefer to retain the exemption to resolve any questions employees may have on the issue.

Another agency requested that OGE add an exemption for a separate investment plan the agency maintains for its employees. A number of agencies have such investment plans. The Office of Government Ethics believes that it would be impractical to list all such plans, and considers them covered by the exemption at § 2640.203(d). In response to a question from the same agency, OGE confirms that employee benefit plans that meet the definition at § 2640.102(c) are covered by the exemption even if they are not covered by the Employee Retirement Income Security Act of 1974 (ERISA). Also, OGE confirms that participation in selecting trustees and investment managers does not constitute selection of plan investments for purposes of § 2640.201(c)(1)(iii)(A). Finally, the same agency asked OGE to establish a new exemption for the sponsors of defined benefit plans administered by an independent trustee and guaranteed by the Pension Benefit Guaranty Corporation (PBGC). The Office of Government Ethics did not add a new exemption in response to this request. First, where a plan sponsor has defaulted on pension payments, the PBGC may not pay employees the full amount due under the pension, and the payments employees do receive may be delayed, causing financial harm to the beneficiaries. Under the circumstances, OGE cannot conclude definitively that an employee's interest in payment of defined benefit is remote and inconsequential even when the pension is guaranteed by the PBGC.

Section 2640.202 Exemptions for Interests in Securities

De Minimis Exemptions for Interests of Employee, Spouse, and Minor Children

A total of thirteen agencies made a number of general comments about the de minimis exemptions at § 2640.202 (a)–(c), as proposed. One agency stated that the three-tiered system of exemptions was reasonable; two other agencies stated that three different de minimis exemptions would create confusion and recommended that OGE eliminate at least § 2640.202(b). Two agencies suggested that the de minimis amounts be raised. Of these, one agency emphasized that the de minimis amounts should be higher for special Government employees. Five agencies stated that the de minimis amounts should be lower. Of these, one recommended that the exemption for party matters at § 2640.202(a) be lowered to $1,000; a second agency suggested that OGE allow individual agencies to lower the de minimis amounts for employees who serve on procurement boards; a third agency made a suggestion for similar authority for regulatory agencies. A fourth agency suggested that the de minimis amounts be set on a sliding scale according to an employee's net worth and that the exemption for matters of general applicability in § 2640.202(c), as proposed, should be conditioned on the employee's interest not being affected in a disproportionate manner.

Four agencies objected to the fact that de minimis amounts proposed did not match the categories of value listed on the public financial disclosure statement (SF 278). Two of these agencies alternatively recommended that OGE revise the financial disclosure statement to correspond with the de minimis amounts. A fifth agency was satisfied with the de minimis amounts, but recommended that the SF 278 form be revised to add a box that employees could check indicating whether a particular holding was in excess of $5,000, $25,000, or $50,000. In general, the agencies that commented on the lack of uniformity between the SF 278 and the de minimis amounts proposed expressed concern about having to contact employees about the value of their holdings before certifying the disclosure form. In addition, one Office of Inspector General stated that the de minimis exemptions would interfere with the ability to conduct investigations because investigators would have to contact an employee early in the investigatory process to determine the value of his holdings before deciding to continue an investigation.

The Office of Government Ethics has carefully considered these comments, and has decided to make one change to the three basic de minimis exemptions as proposed at § 2640.202 (a)–(c). Section 2640.202(b), as proposed, would have established an exemption for employees participating in a particular matter involving specific parties where the financial interest arises from the ownership of securities issued by an entity that is not a party to the matter. After evaluating the comments concerning the overall complexity of the regulation, as well as comments on proposed § 2640.202(b) specifically, the Office of Government Ethics has deleted the separate exemption proposed for disqualifying financial interests arising from ownership of securities issued by nonparties. Accordingly, this final regulation contains two basic de minimis exemptions: A $5,000 de minimis exemption (at § 2640.202(a)) for

interests arising from the ownership of securities issued by an entity that is affected by a particular party matter; and a $25,000/$50,000 de minimis exemption (at § 2640.202(b)) for interests arising from the ownership of securities issued by an entity affected by a particular matter of general applicability. The latter exemption also contains a provision exempting interests arising from the ownership of no more than $50,000 of long-term Federal Government securities, discussed below.

The elimination of proposed § 2640.202(b) will address concerns that the rule's complexity prevents employees from determining when a particular exemption applies. It also avoids the problem of forcing agencies to determine when a specific entity becomes a party to a particular matter. Interests in non-parties will be addressed in the $5,000 exemption at § 2640.202(a), which has been revised to extend coverage to interests arising from ownership of securities issued by both parties and by non-parties. As revised, the exemption applies to security interests in entities that are ''affected by'' the particular party matter. Of course, individual waivers under section 208 (b)(1) or (b)(3) can be issued to address situations where interests in excess of $5,000 are appropriate subjects for a waiver.

The Office of Government Ethics has not adopted other agency recommendations to either raise or lower the de minimis amounts from the levels proposed. As the variety of the comments on this issue indicates, the appropriate level of a de minimis exemption is necessarily a subjective determination about which reasonable people can disagree. The amounts chosen are the maximum that OGE believes can reasonably be considered ''remote or inconsequential'' for any executive branch employee acting in a particular matter. As noted in the Preamble to the proposed rule, OGE will periodically review the specific dollar thresholds as well as other aspects of this regulation.

Moreover, although the comments indicate there is no consensus on the amounts that would be appropriate, or to whom the exemptions should apply, they demonstrate the need for uniform exemptions for all executive branch employees. Accordingly, in this final rule OGE has not revised the regulation as proposed to establish different exemption amounts based on the responsibilities of employees or on a particular agency's mission. In the absence of uniformity, reliance on an exemption by an employee might suggest that the employee is acting less impartially than another employee for whom the exemption is not available. In addition, establishing different exemption amounts for different groups of employees would only add to the rule's complexity.

The Office of Government Ethics did not agree with the suggestion that the exemption amounts should be higher for special Government employees (SGE). Like regular employees, special Government employees have a responsibility to act in the public's interest and to ensure that their participation in official Government matters is not influenced by their personal financial interests. Interests arising from the ownership of securities are likely to present as much of a conflict for SGEs as for regular employees. Moreover, individual waivers may be issued for SGEs serving on advisory committees under section 208(b)(3) or for any SGE under section 208(b)(1).

While OGE agrees it is unfortunate that the exemption amounts and the categories of value on the financial disclosure statement (SF 278) are not consistent, OGE does not have the authority to change the categories on the form, which are required by statute, to match the values of the exemption. Although the basic exemption amount at § 2640.202(a) could have been set to conform to a SF 278 category of value, the exemption would have to have been set at either $1,000 or $15,000. In OGE's view, the former amount is too low to be of much use to employees utilizing the exemptions, while the latter amount is too high to be considered ''remote or inconsequential'' in every case. Additionally, since the holdings of an employee, his spouse and child must be aggregated to determine whether the exemptions apply, it would be virtually impossible to have reconciled the de minimis amounts to the SF 278 categories. The same problem would arise in connection with the exemption at § 2640.202(b), as renumbered, because the employee's holdings in all affected entities must be aggregated to determine if the exemption applies. After the exemption rule has been in effect for long enough to permit agencies and employees to gain experience in applying the rule, OGE intends to evaluate any problems that might interfere with the efficient application of the rule. If warranted, at that time OGE will consider whether it should seek legislation to reconcile the financial reporting system and the exemptions.

Two agencies recommended that the exemptions proposed in § 2640.202 (a) and (b), as renumbered, be expanded to apply to not only the interests of the employee, his spouse and minor children, but to those of all persons listed in section 208 (such as the employee's general partner and person with whom he has an arrangement for future employment). The Office of Government Ethics has not adopted this recommendation. Other provisions in the rule provide broader exemptions for the interests of some of these persons (for example, § 2640.202 (c), (d) and (e)). It would complicate the rule to duplicate coverage for these persons in § 2640.202 (a) and (b), as renumbered, since employees would have to decide which, or how many, exemptions apply to the interests of those persons.

One agency complained that the rule as proposed did not provide clear guidance about what an employee should do when the value of his holdings rises above the de minimis amounts during the course of his participation in a particular matter. The agency suggested that an employee should be required to value his holdings once a year, and then have 45 days to take steps to resolve any disqualifying financial interest before having to disqualify himself from participation in particular matters. The Office of Government Ethics has not revised the rule to address this comment. Example 3 following § 2640.202(a) describes an employee's obligation once he knows the value of his holdings has risen above the de minimis levels.

Under §§ 2640.102(r) and 2640.202 of the rule, a mutual fund, including a sector mutual fund, is considered a publicly traded security for purposes of the various de minimis exemptions. The Preamble of the proposed rule indicated that for purposes of determining whether a de minimis exemption applies in the case of a mutual fund, the value of the employee's interest would be the value of his interest in the fund as a whole, not the pro rata value of any underlying holding of the fund. The Office of Government Ethics proposed this valuation method primarily because the holdings of most mutual funds change frequently and it would be infeasible for an employee to calculate the value of an affected holding at the point he might act in a particular matter. And moreover, in many cases an employee's interest in the sector as a whole is really a more accurate measure of his interest in the particular matter. However, three agencies objected to this proposed valuation method and stated that the value of the underlying holding should determine whether the de minimis amount is exceeded. The agencies pointed out that an employee,

consistent with the de minimis exemption at § 2640.202(a), could participate in a party matter affecting a company in which he owns $5,000 worth of stock, but would be barred from participating in the same matter if he owned $6,000 in a sector mutual fund whose proportionate holding in the same company is $50. The Office of Government Ethics agrees that the value of the affected underlying holding may sometimes be a more precise measure of whether an employee's financial interest is remote or inconsequential within the meaning of section 208, but remains concerned that an employee cannot accurately determine the value of an underlying holding at the time of his proposed participation because mutual fund assets are bought and sold so frequently. Moreover, interpreting the exemption to apply to the value of the fund as a whole is not inherently unfair since, in many cases, an employee's interest in the entire sector may be a more accurate measure of the value of his interest in the matter. Additionally, OGE is sensitive to concerns expressed by other commenters about devising exemptions that are unduly complicated. On balance, OGE believes the rule will be fairer and easier to implement if the $5,000 exemption applies to the value of the sector fund as a whole. Of course, individual waivers under section 208(b)(1) may be issued to employees whose mutual fund is in excess of $5,000. And, if agencies report difficulties in implementing the de minimis provisions as they apply to sector mutual funds, OGE will reconsider the issue.

Interests in Federal Government Securities

One agency questioned why there should be any distinction between long- and short-term Government securities for purposes of the exemptions. The Office of Government Ethics, in consultation with the Department of Justice, has concluded that employees whose duties concern setting interest rates or formulating monetary policy may have the potential for more significant gains or losses arising from the ownership of long-term Government securities. Therefore, the exemption for those securities is narrower than the exemption for short-term Government securities. At the request of another agency, OGE expanded the exemption at § 2640.202(b), as renumbered, for long-term Federal Government securities to $50,000. As requested by the same agency, OGE added an exemption for U.S. Savings bonds at § 2640.202(c), as renumbered. Corresponding changes to the definition of ''long-term Federal Government security'' have been added to § 2640.102(i), as renumbered, and a definition of ''U.S. Savings bond'' has been added at § 2640.102(v). Although interests in these Federal Government securities do not create a disqualifying financial interest for most employees, these exemptions will be available for those employees of the Department of the Treasury, the Federal Reserve, and similar other agencies where duties may create a disqualifying financial interest.

Interests of Tax Exempt Organizations

Four agencies commented on the exemption for the interests of tax exempt organizations in proposed § 2640.202(e), now renumbered as § 2640.202(d). One agency stated that the exemption should apply to the securities holdings of all companies, whether or not they are nonprofit; another thought it should apply to the interests of nonprofits that are tax exempt under other subparts of 26 U.S.C. 501(c), in particular section 501(c)(4). The Office of Government Ethics originally devised this exemption in response to requests from agencies who stated that they routinely issue individual waivers to employees serving on the boards of various nonprofits, particularly colleges and universities. Interests arising from the holdings of other types of companies the employee serves as officer, director, trustee or employee are better handled on an individual basis through a waiver under section 208 (b)(1) or (b)(3). However, OGE has revised the regulation to include nonprofit organizations that are tax exempt under either 26 U.S.C. 501 (c)(3) or (c)(4).

Two agencies objected to limiting the exemption proposed, at renumbered § 2640.202(d), to situations where the affected holdings amount to no more than 20% of the organization's portfolio. One of the agencies pointed out that an employee would have to be recalculating percentages during the course of his participation in a matter to ensure that the 20% limitation was not exceeded. The Office of Government Ethics agrees, and has accordingly revised the regulation in adopting it in final form.

One agency suggested that OGE delete the proposed requirement that an employee must be an unpaid officer, director, or trustee for the exemption to apply. OGE did not adopt this recommendation because it believes such situations should be handled on an individual basis under the waiver provisions at section 208 (b)(1) or (b)(3). However, OGE wishes to clarify that receipt of travel reimbursement (or reimbursement of other similar types of expenses) from an organization would not be considered a form of pay for purposes of this exemption. Finally, OGE disagrees with an agency which suggested that the exemption is an unnecessary change from past OGE practice in handling interests of organizations an employee serves as officer, director, or trustee. To the extent that OGE has not required recusal or individual waivers for such an employee, it has assumed that the employee had no knowledge of the organization's investments.

Interests of General Partners

The Office of Government Ethics did not adopt one agency recommendation to broaden the proposed exemption at § 2640.202(e), as renumbered, to include any interest of an employee's general partner as long as it is not related to the partnership. That approach would amount to eliminating the interests of general partners from coverage under section 208, which is a legislative function. For similar reasons, OGE also did not adopt an agency recommendation to exempt all the interests of an employee's general partner in cases where the employee is a limited partner. Finally, OGE does not agree with one agency's contention that section 208 has no applicability to an employee's general partners if the employee is only a limited partner. It also does not agree with the suggestion of that agency, and of one other agency, that an exemption should apply to all the interests of an employee's general partner where the employee is a limited partner in a partnership with more 15 limited partners. The Office of Government Ethics cannot say with any certainty that all such interests are ''remote or inconsequential'' enough to warrant automatic exemptions for all employees under this regulation.

Section 2640.203 Miscellaneous Exemptions

Hiring Decisions

Four agencies commented on proposed § 2640.203(a). Two agencies stated that § 2640.203(a) is unnecessary and confusing and should be omitted from the final rule. The Office of Government Ethics disagrees. The provision was included at the request of an agency that is routinely involved in hiring new employees with significant financial interests in corporations. Hiring in some of these cases significantly impacts the financial interests of the former private sector employer and the exemption will provide those employees involved in

the hiring with assurance that section 208 will not be violated.

One agency suggested that OGE define the term ''hiring decisions.'' The Office of Government Ethics decided not to define the term so that the provision, given the common understanding of the term, will be broad enough to cover various stages of the hiring process. One agency recommended that OGE define the term ''vested pension plan'' or delete the word ''vested.'' In order to simplify the provision, the Office of Government Ethics has decided to delete the word ''vested.''

Employees on Leave From Institutions of Higher Education

Two comments were received regarding § 2640.203(b) as proposed. One agency commented that the exemption will be very helpful to agencies that recruit a large number of noncareer appointees from the private sector. Another agency stated that many employees will benefit from the application of the exemption. Both agencies recommended that § 2640.203(b) be broadened. One recommended that the exemption include nonprofit employers such as medical institutions and other nonprofit entities. The other agency requested that the exemption also include State and local governmental entities. The Office of Government Ethics has not changed this provision. The exemption was proposed for inclusion primarily at the request of agencies who hire large numbers of persons whose principal employers are universities, which commonly grant leaves of absence. There is no indication that agencies must routinely address conflicts of interest questions involving employees who are on leaves of absence from other nonprofit entities or from State or local governments.

Multi-Campus Institutions of Higher Education

One agency commented on proposed § 2640.203(c). No changes have been made in the regulation to address the agency's concern that the exemption include participation in matters affecting the State that operates the institution. In a formal advisory opinion (82 OGE 1, February 12, 1982), as published in ''The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics'' 851 (1979–1988), OGE stated that the interests of a university will not be imputed to the State that operates the institution. Accordingly, no exemption would be necessary. The same agency commented on the note which followed § 2640.203(c) as proposed. The agency questioned why it would be necessary to determine whether State institutions constitute a State ''system.'' To further simplify the rule, OGE has decided to eliminate the note.

Financial Interests Arising From Federal Government Employment or From Social Security or Veterans' Benefits

Thirteen comments were received concerning recodified and renumbered § 2640.203(d), which was published as an interim rule at § 2640.101 in the Federal Register on August 28, 1995 (60 FR 44706, 44709). One general comment, made by four agencies, expressed concern regarding the decision to treat financial interests that arise from Government salary and employment as disqualifying under 18 U.S.C. 208(a). The Office of Government Ethics understands these concerns. However, for reasons discussed in the Preamble of the interim rule, OGE has decided not to change the position adopted by this Office in consultation with the Department of Justice. Most of the potential adverse effects of treating these interests as disqualifying are mitigated by this regulation, which would exempt most of the financial interests from the disqualification provision of section 208(a).

One agency recommended that OGE emphasize that § 2640.203(d) does not preclude an employee from seeking improvements in his working conditions merely because a spouse's working conditions might also benefit from the change. Under § 2640.203(d), if the request is made on his behalf, rather than on behalf of his spouse, an employee may request that his working environment be enhanced even if the request results in an improved working environment for his spouse.

Three agencies commented on the phrase ''determinations that individually or specially affect their Government salary and benefits. The first agency commented that the phrase did not clarify the scope of the exemption. The Office of Government Ethics has not modified the regulation because the ten examples which follow the exemption help illustrate the scope of the exemption. This agency also questioned whether the exemption would permit an office director and her top management to decide what positions will be subject to a reduction in force without requiring them to obtain individual waivers. Example 10 following the exemption addresses a very similar issue.

A second agency questioned whether the adverbs ''individually or specially'' would modify both ''relate to'' and ''affect.'' ''Individually or specially'' modify both phrases. The third agency requested that the terms ''individually'' and ''specially'' be defined. The Office of Government Ethics believes that the examples which follow § 2640.203(d) illustrate the meaning of the terms ''individually'' and ''specially.'' Of course, in cases where an agency is uncertain whether an exemption applies, it is always free to issue an individual waiver under section 208 (b)(1) or (b)(3).

The third agency also recommended that the phrase ''make determinations'' be defined. Through the examples following § 2640.203(d), the Office of Government Ethics has illustrated what constitutes a determination. Generally, a determination involves an official Government decision whether intermediate or final.

Six agencies commented on Example 3 following § 2640.203(d). Generally, these agencies indicated that some high-level officials and senior personnel do not have a ''supervising official'' to approve travel authorizations or vouchers. To accommodate agency concerns, OGE inserted the following clause into the final sentence of Example 3 as adopted in this final rule: ''unless he has been delegated, in advance, authority to make such approvals in accordance with agency policy.'' Consequently, an employee may approve his own travel authorization or payment of his own travel expenses if, in advance, such authority has been delegated to him according to agency policy. For purposes of this exemption, an advance delegation of this type will be deemed to be a determination by the employee's agency rather than a determination by the employee. Another agency questioned whether the approval of an employee's travel voucher by both the ''approving official'' and the ''certifying official'' are ''determinations'' for purposes of § 2640.203(d). Both certification and approval are determinations within the scope of the exemption found at § 2640.203(d) of this final rule.

One agency stated that it was not clear that the situations described in Examples 4 and 6 following § 2640.203(d) present ''particular matters.'' The examples concern all Federal employees or a very large group of Federal employees. The Office of Government Ethics believes that the class of all Federal employees or a large group of Federal employees is a ''discrete and identifiable class of persons'' within the meaning of a ''particular matter'' found in this regulation at § 2640.103(a)(1).

One agency commented on Example 5 following § 2640.203(d). The agency argued that drafting a regulation that will provide expanded hospital benefits for veterans is not a ''particular matter'' and would not require an exemption. The Office of Government Ethics disagrees with this argument. According to § 2640.103(a)(1), a particular matter includes '' * * * matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.'' Veterans are a discrete and identifiable class of persons; therefore, a regulation dealing with hospital benefits for veterans is a particular matter.

Another agency did not understand the distinction, if any, between Example 7 and Example 8 which follow § 2640.203(d). Example 7 allows an employee to participate in GSA's evaluation of the feasibility of privatizing the Federal Supply Service, even though the employee's own position would be eliminated if the decision to privatize were made. The employee may participate in the evaluation because according to the facts as described, he is merely studying whether it is feasible to privatize the Federal Supply Service. Ultimately, GSA may decide not to privatize. At this point, it cannot be said that the matter will have a direct and predictable effect on the employee's financial interest, and therefore, no exemption or waiver is needed to allow the employee to participate. Moreover, even if the employee was involved in the implementation of a decision to privatize the Federal Supply Service, the employee would not be making a determination that individually or specially affects his own Government salary. In Example 8, the employee may not participate in the implementation of the privatization plan to eliminate the employee's Federal position and create a new position in a private organization because the employee would be making determinations that affect interests other than those that arise from Government employment. The employee's interest in a position in the newly privatized corporation is not an interest that ''arises from Federal Government employment or from Social Security or veterans' benefits.''

One agency suggested that recodified § 2640.203(d) be broadened to cover the salary and benefits of employees of the Federal Reserve banks. The Office of Government Ethics revised the provision accordingly.

Three comments were received regarding privatization concerns. One agency recommended that the Office of Government Ethics assume a leadership role to facilitate privatization efforts through the development of solutions to potential ethics impediments to privatization. The Office of Government Ethics has addressed some privatization issues in the interim rule published in the Federal Register on August 28, 1995 (60 FR 44706). With some limitations, the exemption permits an employee to engage in many of the activities associated with privatization. Furthermore, OGE provides practical advice to agency officials involved in privatization. Another agency's comment requested that OGE adopt an exemption in the cases of salaries and benefits of employees of any Federal agency engaged in planning the transfer of all its assets, programs and employees to a successor nonprofit corporation in either the public or the private sector. A comprehensive regulatory exemption is not appropriate in such cases. The Office of Government Ethics cannot make a blanket determination that in all such situations the financial interests of all employees are too remote or too inconsequential to affect the integrity of their services. Therefore, no exemption has been adopted; however, the agency may issue individual waivers under section 208(b)(1) or (b)(3) where applicable to facilitate the transition to a nonprofit corporation. Finally, one person questioned whether § 2640.203(d) applies to union officials involved in privatization negotiations. The exemptions found at part 2640 apply to union officials to the same extent to which they apply to all other executive branch employees.

One agency questioned why interests arising from Social Security and veterans' benefits were exempted under § 2640.203(d), but financial interests arising from participation in programs such as Medicare, Medicaid, Food Stamps, Aid to Families with Dependent Children and Federal student loans were not exempted. Because interests in those programs are not derived from the individual's status as a Government employee, the exemption at § 2640.203(d) is not applicable.

Special Government Employees Serving on Advisory Committees

Four agencies responded positively to § 2640.203(g) of the proposed rule indicating that the exemption will make it easier for agencies to recruit special Government employees (SGE). One agency recommended that the exemption be expanded to cover investment interests in the special Government employee's area of expertise. The agency asserted that such interests do not pose any greater threat to the integrity of the SGE's services than employment interests. The Office of Government Ethics has not expanded the exemption to cover investment interests in a SGE's area of expertise because exemptions for certain investment interests are already available under § 2640.202. If the exemptions under § 2640.202 are not sufficient, then the employee may request a waiver under 18 U.S.C. 208(b)(3).

Another agency suggested that § 2640.203(g) apply to all non-Federal employers of the SGE, not just the SGE's ''principal employer,'' since many advisory committee members act as consultants to various different private sector entities. The Office of Government Ethics believes the exemption should apply only where the employee has an employee/employer relationship with the outside entity. Employees serving on advisory committees often are chosen because of their expertise in a certain field or because of their affiliation with certain interest groups. Because advisory committee meetings are open, employment interests are readily apparent to the public. Members and their employment affiliations are typically identified publicly. On the other hand, an SGE's bias because of an affiliation as a consultant may not be so evident and since such relationships may not be well known to the public. Therefore, the Office of Government Ethics has not changed this provision.

Another agency recommended that the exemption cover all SGEs, not just those serving on advisory committees. The Office of Government Ethics disagrees with the recommendation and is not adopting it in this final rule. As explained in the preamble of the proposed rule, the exemption at § 2640.203(g) is limited to special Government employees who are on Federal advisory committees because the public's interest in the integrity of advisory committee proceedings is protected by the nature of the proceedings themselves. Ordinarily, no one individual can control the recommendations of the committee. Moreover, the public interest in the employees' integrity is protected by the openness required by the Federal Advisory Committee Act, 5 U.S.C. app. Such safeguards are not present in the case of SGEs not serving on advisory committees.

One agency asked that OGE clarify the phrase ''special or distinct effect'' used in proposed § 2640.203(g). Because of the need for flexibility, the Office of Government Ethics did not define the

phrase. Example 1 following § 2640.203(g) explains that an SGE may participate in a matter on an advisory committee even though the recommendation by the advisory committee will affect his non-Federal employer as part of a class. However, it is not OGE's intent that the exemption apply only where the effect of the matter on members within a class is identical. Normally, the matter would have a ''special or distinct effect'' when its impact would be unique to the employee or his employer, or where the effect would be clearly out of proportion in comparison to the effect on other members of the class. Where it is difficult to determine if a ''special or distinct effect'' may occur, an agency has the option of issuing an individual waiver under section 208 (b)(1) or (b)(3).

Directors of Federal Reserve Banks

One agency commented on § 2640.203(h) of the proposed rule and questioned whether use of the exemption would preclude the use of other exemptions such as those for de minimis investments. The exemptions found in this final part 2640 regulation are intended to be used where applicable in particular situations with no restriction on the number of exemptions utilized by an employee. Therefore, application of one exemption does not preclude the application of another exemption.

Medical Products

One agency commented on § 2640.203(i) as proposed. The agency stated that § 2640.203(i)(1) should not be limited to matters involving the ''approval or classification'' of medical products, but should be broadened to cover ''Federal advisory committee matters concerning medical products * * * .'' The agency recommended eliminating the distinction between medical products and medical devices because in the industry ''medical products'' is a generic term used to describe all products and devices intended for therapeutic or diagnostic purposes. The Office of Government Ethics has adopted both recommendations in this final rule. The agency requested that the language of § 2640.203(i)(1) include ''use by or sale to its patients'' to reflect actual practice where hospitals have a pharmacy from which patients buy prescription products for use on an outpatient basis. The agency also recommended that proposed § 2640.203(i)(2) be changed to cover ''the use or prescription of medical products for patients.'' Based on the commenting agency's expertise, OGE has revised § 2640.203(i) to accommodate the agency's recommendations. The agency also requested that it should be noted that intellectual property rights are not covered by this exemption. The Office of Government Ethics has not incorporated this suggestion. To simplify the regulation, OGE has decided to describe only what interests are covered by the exemptions rather than what interests are not included.

The same agency recommended that proposed § 2640.203(i) should cover SGEs who are not serving on a Federal advisory committee, provided that the SGEs work no more than 60 days in any 365 day period and their services are advisory only. The safeguards of the Federal advisory committee process, as described above, are not present in situations involving SGEs not serving on advisory committees; therefore, the Office of Government Ethics has not expanded the exemption in the final rule.

Representative Members of FDA Advisory Committees

A new exemption has been added, at the request of the Food and Drug Administration (FDA), at § 2640.203(j) of the final rule for certain nonvoting representative members of technical advisory committees established by the FDA. The provision exempts any disqualifying financial interest the nonvoting member has in the class that he represents on the committee. The exemption continues, in part, an existing FDA exemption promulgated in 1976 when individual agencies had the authority to issue old section 208(b)(2) regulatory waivers.

Nonvoting members of FDA technical advisory committees may be appointed pursuant to one of several authorities, including 21 U.S.C. 394, 360c(b), or 360j(f)(3). Some of these statutory authorities require that certain members of the committees be appointed as representatives of consumer and industry groups and specify that these groups have the opportunity to nominate persons to serve in a representative capacity. Ordinarily, persons serving in a representative capacity would not be considered employees of the Government. *See* Office of Government Ethics (OGE) Informal Advisory Letter 82x22, ''The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics'' 325, 329–31 (1979–1988).

Nevertheless, HHS has appointed these members as special Government employees because 21 U.S.C. 331(j) prohibits the FDA from disclosing trade secret information to persons who are not employees of HHS, and the members of these technical advisory committees need to have access to certain trade secret information in order to carry out the committees' activities. Therefore, in order to accomplish the work that Congress intended these committees perform, the representative members of these committees are appointed as special Government employees.

As a general proposition, OGE believes that representatives are not Government employees because they are not carrying out a Federal function on behalf of the Government. Accordingly, in OGE's view, representatives ordinarily would not be appointed as employees. Where members of FDA technical advisory committees are required by statute to be appointed as representatives and must have access to confidential information to carry out their duties as members of the committee, however, it is arguable that Congress envisioned that they would act as both representatives and as employees.

Regulations promulgated by the FDA that govern the activities of these representative members contain certain limitations designed to safeguard the integrity of the advisory committee proceedings. First, although the members are appointed as special Government employees, they are still under an obligation to represent the views of non-Federal industry and consumer groups, and this obligation is publicly disclosed. See 21 CFR 14.84(c). And although representative members participate in committee discussions, they are not permitted to vote on committee recommendations. 21 CFR 14.86(a)(1). Representative members are also subject to specific limitations on their participation in matters directly involving their employer, as well as general limitations on their advocacy. 21 CFR 14.86(c)(4)–(6). Failure to adhere to these limitations may result in removal from the committee. 21 CFR 14.86(d). Accordingly, in view of the limited nature of their services and the public expectation that they will act as representatives, there appears to be little risk that appointment of these representatives as special Government employees will impair the advisory committee process.

The exemption applies only to disqualifying financial interests that arise from the class which the employee represents. For example, an employee who represents the pharmaceutical industry may have disqualifying financial interests that arise from his employment with a pharmaceutical company and from ownership of stock

in the company. The employee's disqualifying financial interests arising from these relationships and assets are exempt under § 2640.203(j). On the other hand, ownership of stock in the same company by an employee who represents consumer groups does not create a disqualifying financial interest in the same class which the employee represents. In this case, the employee who represents consumer groups would need an individual waiver under section 208(b)(1) or (b)(3) before participating in advisory committee activities affecting the company in which she owns stock.

Employees of the Tennessee Valley Authority

Section 2640.203(k) of the final rule contains a new exemption applicable to employees of the Tennessee Valley Authority (TVA) who participate in developing or approving power rate schedules, or other similar matters, for the production of electric power within the TVA service area. The provision continues an existing exemption promulgated by the TVA at 18 CFR 1300.735 pursuant to its authority under 18 U.S.C. 208(b)(2) before the statute was amended in 1989. The exemption applies only to disqualifying financial interests arising from the use of electric power sold by the TVA.

Section 2640.204 Prohibited Financial Interests

One agency stated that 5 CFR 2635.403(b), which authorizes an agency to prohibit the holding of certain financial interests in individual cases, should have no applicability where a financial interest is covered by a regulatory exemption. The agency noted that situations arising under § 2635.403(b) are not analogous to situations where financial interests are prohibited under statute or supplemental regulation. The Office of Government Ethics did not make the recommended modification. Deleting the reference to 5 CFR 2635.403(b) would interfere with an agency's ability to make independent determinations about substantial conflicts. However, § 2640.204 has been revised to clarify that none of the exemptions apply to financial interests ''held or acquired by the employee, his spouse, or minor child in violation of a statute or agency supplemental regulation * * *.'' This clarifying revision is necessary to address the fact that a few agencies have supplemental regulations which prohibit spouses and minor children from holding or acquiring certain interests.

Section 2640.205 Employee Responsibility

One agency requested that the final sentence in this section as proposed, which referred in part to an employee's uncertainty about whether a waiver is applicable, should be changed to reference an ''exemption or waiver.'' The Office of Government Ethics has corrected that provision in the final rule to state, ''An employee who is unsure whether an exemption is applicable * * *.''

Two agencies made comments regarding employee reliance on agency advice. One agency thought it would be useful to encourage employees to rely on specific advice of their organization's ethics officials. Another agency recommended that OGE add a ''safe harbor'' provision under which the employee would not be subject to criminal prosecution or disciplinary action when relying in good faith on the advice of an agency ethics official with respect to the applicability of the exemptions. The Office of Government Ethics did not add a ''safe harbor'' provision. The correct standard concerning reliance on the advice of ethics officials is stated at 5 CFR 2635.107(b). That provision states that ''good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution.''

One agency stated that it supports the concept that employees have to take responsibility for determining whether an exemption applies in a particular case. A second agency, however, expressed concern that the regulation as proposed would not accomplish its stated purpose of lessening the burden on agency ethics officials since employees may not rely on a provision unless the interest is specifically exempt and employees will be forced to consult with an ethics official prior to taking action. The Office of Government Ethics understands this concern, but believes that most employees will be able to apply the basic exemption provisions once they take effect. In addition, because this regulation implements a criminal statute, it should be sufficiently precise so that employees have adequate notice of when they may act without fear of violating section 208. Naturally, when an employee is in doubt as to the application of a particular provision, he will have to consult with an ethics official. However, as addressed earlier in the Summary of Contents, OGE has attempted to make the regulations less complex by simplifying language and deleting some exemptions. These modifications should make the regulation somewhat easier for employees to understand and apply.

One agency complained about the burden on employees in complying with the regulation to the extent that they would have to obtain information about their investments to determine whether they meet with conditions set forth in the exemptions. The Office of Government Ethics does not believe this should be an onerous task. Most employees receive prospectuses and periodic updates about their investments. If they did not keep these materials, they can obtain information by calling the manager of the fund, trust or plan.

The same agency suggested the creation of a Governmentwide database listing investments (e.g., nonsector mutual funds and certain pensions) that do not create conflicts of interests and that could be updated quarterly and shared by all agencies and employees as a means of ensuring compliance. The Office of Government Ethics does not believe this would be a practical use of resources or staff. The number of investments that could be included would be so large that it would be nearly impossible to identify them all with any precision. Inevitably, some investments would be omitted, and the system would prove to be unreliable.

One agency suggested that OGE provide training resources for employees and ethics officials. The Office of Government Ethics anticipates developing training resources and materials concerning the new regulation.

Section 2640.206 Existing Agency Exemptions

An agency suggested that the regulation include a grandfather clause for those employees who currently have exempted interests under individual agency regulations, allowing the employee to continue to hold that exempted interest as long as the employee maintains the same duties. The Office of Government Ethics does not agree that a grandfather clause would be desirable. A grandfather clause would result in a complicated scheme for agencies to administer. Under such system, some employees would function under section 208(b)(2) agency exemptions in existence prior to these regulations, while others would function under the new exemptions. If an agency needs to continue a specific exemption not covered under these regulations, it should submit one to OGE for consideration. Alternatively, an agency can consider granting waivers on an individual basis under section

208(b)(1) to employees who have exemptions under current agency rules.

Subpart C—Individual Waivers

Section 2640.301 Waivers Issued Pursuant to 18 U.S.C. 208(b)(1)

One agency commented that subpart C of the part 2640 regulation as proposed should be deleted in its entirety, as it is duplicative and unnecessary since individual waivers are covered at 5 CFR 2635.402(d)(2). The Office of Government Ethics has not adopted this suggestion in this final rule. These new regulations contain more detailed requirements than those described in § 2635.402(d)(2), as well as a list of factors an agency may use in determining whether a disqualifying financial interest is sufficiently substantial to be deemed likely to affect the integrity of the employee's services to the Government.

A second agency responded with two observations. First, the agency assumed that describing the broad scope of duties encompassed by an employee's official duties will be sufficient to meet the requirement under § 2640.301(a)(3). Second, it stated that an appointing authority has discretion, but is not required to issue a waiver even if all of the enumerated requirements are met. The Office of Government Ethics agrees with the commenter on both points and has retained subpart C in its entirety in this final rule.

Another agency thought it would be helpful to add to proposed § 2640.301(b) another factor such as ''availability at the location of other persons qualified to perform the service in a timely fashion,'' in order to assist agencies that have small posts abroad where no one else can perform the employee's tasks. The Office of Government Ethics did not add this factor because consideration of such circumstances is implicit in the factor described at § 2640.301(b)(b)(6)(ii).

Section 2640.304 Public Availability of Agency Waivers

One agency requested that OGE add a requirement that advisory committee members file public financial disclosure statements or, alternatively, that OGE seek appropriate legislation modifying section 107(a)(2) of the Ethics in Government Act to require agencies to disclose publicly the identity of an individual's principal employment, positions held and contractual relationships, and investment interests that may be relevant to the purposes and functions of the advisory committee. This request is outside the scope of this regulation, which deals principally with exemptions from section 208.

III. Existing Agency Exemptions

As of the effective date of this regulation, regulatory exemptions issued by individual agencies under the authority of 18 U.S.C. 208(b)(2), as in effect prior to November 30, 1989, will no longer be effective.

IV. Matters of Regulatory Procedure

Executive Order 12866

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Review and Planning. This regulation has also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final regulation will not have a significant impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this final regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: September 26, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending title 5, chapter XVI, subchapter B of the Code of Federal Regulations by revising part 2640 to read as follows:

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

Subpart A—General Provisions

Sec.

2640.101 Purpose.
2640.102 Definitions.
2640.103 Prohibition.

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans.
2640.202 Exemptions for interests in securities.
2640.203 Miscellaneous exemptions.
2640.204 Prohibited financial interests.
2640.205 Employee responsibility.
2640.206 Existing agency exemptions.

Subpart C—Individual Waivers

2640.301 Waivers issued pursuant to 18 U.S.C. 208(b)(1).
2640.302 Waivers issued pursuant to 18 U.S.C. 208(b)(3).
2640.303 Consultation and notification regarding waivers.
2640.304 Public availability of agency waivers.

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2640.101 Purpose.

18 U.S.C. 208(a) prohibits an officer or employee of the executive branch, of any independent agency of the United States, of the District of Columbia, or Federal Reserve bank director, officer, or employee, or any special Government employee from participating in an official capacity in particular matters in which he has a personal financial interest, or in which certain persons or organizations with which he is affiliated have a financial interest. The statute is intended to prevent an employee from allowing personal interests to affect his official actions, and to protect governmental processes from actual or apparent conflicts of interests. However, in certain cases, the nature and size of the financial interest and the nature of the matter in which the employee would act are unlikely to affect an employee's official actions. Accordingly, the statute permits waivers of the disqualification provision in certain cases, either on an individual basis or pursuant to general regulation. Section 208(b)(2) provides that the Director of the Office of Government Ethics may, by regulation, exempt from the general prohibition, financial interests which are too remote or too inconsequential to affect the integrity of the services of the employees to which the prohibition applies. The regulations in this part describe those financial interests. This part also provides guidance to agencies on the factors to consider when issuing individual waivers under 18 U.S.C. 208 (b)(1) or (b)(3), and provides an interpretation of 18 U.S.C. 208(a).

§ 2640.102 Definitions.

For purposes of this part:

(a) *Diversified* means that the fund, trust or plan does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of an employee benefit plan, means that the plan's trustee has a written policy of varying plan investments.

Note to paragraph (a): A mutual fund is diversified for purposes of this part if it does not have a policy of concentrating its investments in an industry, business, country other than the United States, or single State within the United States. Whether a mutual fund meets this standard may be determined by checking the fund's prospectus or by calling a broker or the manager of the fund. An employee benefit plan is diversified if the plan manager has a written policy of varying assets. This policy might be found in materials describing the plan or may be obtained in a written statement from the plan manager. It is important to note that a mutual fund or employee benefit plan that is diversified for purposes of this part may not necessarily be an excepted investment fund (EIF) for purposes of reporting financial interests pursuant to 5 CFR 2634.310(c). In some cases, an employee may have to report the underlying assets of a fund or plan on his financial disclosure statement even though an exemption set forth in this part would permit the employee to participate in a matter affecting the underlying assets of the fund or plan. Conversely, there may be situations in which no exemption in this part is applicable to the assets of a fund or plan which is properly reported as an EIF on the employee's financial disclosure statement.

(b) *Employee* means an officer or employee of the executive branch of the United States, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia. The term also includes a special Government employee as defined in 18 U.S.C. 202.

(c) *Employee benefit plan* means a plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3), and that has more than one participant. An employee benefit plan is any plan, fund or program established or maintained by an employer or an employee organization, or both, to provide its participants medical, disability, death, unemployment, or vacation benefits, training programs, day care centers, scholarship funds, prepaid legal services, deferred income, or retirement income.

(d) *He, his,* and *him* include she, hers, and her.

(e) *Holdings* means portfolio of investments.

(f) *Independent trustee* means a trustee who is independent of the sponsor and the participants in a plan, or is a registered investment advisor.

(g) *Institution of higher education* means an educational institution as defined in 20 U.S.C. 1141(a).

(h) *Issuer* means a person who issues or proposes to issue any security, or has any outstanding security which it has issued.

(i) *Long-term Federal Government security* means a bond or note, except for a U.S. Savings bond, with a maturity of more than one year issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.

(j) *Municipal security* means direct obligation of, or obligation guaranteed as to principal or interest by, a State (or any of its political subdivisions, or any municipal corporate instrumentality of one or more States), or the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(k) *Mutual fund* means an entity which is registered as a management company under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 *et seq.*). For purposes of this part, the term mutual fund includes open-end and closed-end mutual funds and registered money market funds.

(l) *Particular matter involving specific parties* includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties.

(m) *Particular matter of general applicability* means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties.

(n) *Pension plan* means any plan, fund or program maintained by an employer or an employee organization, or both, to provide retirement income to employees, or which results in deferral of income for periods extending to, or beyond, termination of employment.

(o) *Person* means an individual, corporation, company, association, firm, partnership, society or any other organization or institution.

(p) *Publicly traded security* means a security as defined in paragraph (r) of this section and which is:

(1) Registered with the Securities and Exchange Commission pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) and listed on a national or regional securities exchange or traded through NASDAQ;

(2) Issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940, as amended (15 U.S.C. 80a–8); or

(3) A corporate bond registered as an offering with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) and issued by an entity whose stock is a publicly traded security.

Note to paragraph (p): National securities exchanges include the American Stock Exchange and the New York Stock Exchange. Regional exchanges include Boston, Cincinnati, Intermountain (Salt Lake City), Midwest (Chicago), Pacific (Los Angeles and San Francisco), Philadelphia (Philadelphia and Miami), and Spokane stock exchanges.

(q) *Sector mutual fund* means a mutual fund that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single State within the United States.

(r) *Security* means common stock, preferred stock, corporate bond, municipal security, mutual fund, long-term Federal Government security, and limited partnership interest.

(s) *Short-term Federal Government security* means a bill with a maturity of one year or less issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.

(t) *Special Government employee* means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(u) *Unit investment trust* means an investment company as defined in 15 U.S.C. 80a–4(2) that is a regulated investment company under 26 U.S.C. 851.

(v) *United States Savings bond* means a savings bond issued by the United States Treasury pursuant to 31 U.S.C. 3105.

§ 2640.103 Prohibition.

(a) *Statutory prohibition.* Unless permitted by 18 U.S.C. 208(b) (1)–(4), an employee is prohibited by 18 U.S.C. 208(a) from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on

that interest. The restrictions of 18 U.S.C. 208 are described more fully in 5 CFR 2635.401 and 2635.402.

(1) *Particular matter.* The term ''particular matter'' includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. The particular matters covered by this part include a judicial or other proceeding, application or request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: The Overseas Private Investment Corporation decides to hire a contractor to conduct EEO training for its employees. The award of a contract for training services is a particular matter.

Example 2: The spouse of a high level official of the Internal Revenue Service (IRS) requests a meeting on behalf of her client (a major U.S. corporation) with IRS officials to discuss a provision of IRS regulations governing depreciation of equipment. The spouse will be paid a fee by the corporation for arranging and attending the meeting. The consideration of the spouse's request and the decision to hold the meeting are particular matters in which the spouse has a financial interest.

Example 3: A regulation published by the Department of Agriculture applicable only to companies that operate meat packing plants is a particular matter.

Example 4: A change by the Department of Labor to health and safety regulations applicable to all employers in the United States is not a particular matter. The change in the regulations is directed to the interests of a large and diverse group of persons.

Example 5: The allocation of additional resources to the investigation and prosecution of white collar crime by the Department of Justice is not a particular matter. Similarly, deliberations on the general merits of an omnibus bill such as the Tax Reform Act of 1986 are not sufficiently focused on the interests of specific persons, or a discrete and identifiable group of persons to constitute participation in a particular matter.

Example 6: The recommendations of the Council of Economic Advisors to the President about appropriate policies to maintain economic growth and stability are not particular matters. Discussions about economic growth policies are directed to the interests of a large and diverse group of persons.

Example 7: The formulation and implementation of the response of the United States to the military invasion of a U.S. ally is not a particular matter. General deliberations, decisions and actions concerning a response are based on a consideration of the political, military, diplomatic and economic interests of every sector of society and are too diffuse to be focused on the interests of specific individuals or entities. However, at the time consideration is given to actions focused on specific individuals or entities, or a discrete and identifiable class of individuals or entities, the matters under consideration would be particular matters. These would include, for example, discussions whether to close a particular oil pumping station or pipeline in the area where hostilities are taking place, or a decision to seize a particular oil field or oil tanker.

Example 8: A legislative proposal for broad health care reform is not a particular matter because it is not focused on the interests of specific persons, or a discrete and identifiable class of persons. It is intended to affect every person in the United States. However, consideration and implementation, through regulations, of a section of the health care bill limiting the amount that can be charged for prescription drugs is sufficiently focused on the interests of pharmaceutical companies that it would be a particular matter.

(2) *Personal and substantial participation.* To participate ''personally'' means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate ''substantially'' means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

Example 1: An agency's Office of Enforcement is investigating the allegedly fraudulent marketing practices of a major corporation. One of the agency's personnel specialists is asked to provide information to the Office of Enforcement about the agency's personnel ceiling so that the Office can determine whether new employees can be hired to work on the investigation. The employee personnel specialist owns $10,000 worth of stock in the corporation that is the target of the investigation. She does not have a disqualifying financial interest in the matter (the investigation and possible subsequent enforcement proceedings) because her involvement is on a peripheral personnel issue and her participation cannot be considered ''substantial'' as defined in the statute.

(3) *Direct and predictable effect.* (i) A particular matter will have a ''direct'' effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this part.

(ii) A particular matter will have a ''predictable'' effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

Example 1: An attorney at the Department of Justice is working on a case in which several large companies are defendants. If the Department wins the case, the defendants may be required to reimburse the Federal Government for their failure to adequately perform work under several contracts with the Government. The attorney's spouse is a salaried employee of one of the companies, working in a division that has no involvement in any of the contracts. She does not participate in any bonus or benefit plans tied to the profitability of the company, nor does she own stock in the company. Because there is no evidence that the case will have a direct and predictable effect on whether the spouse will retain her job or maintain the level of her salary, or whether the company will undergo any reorganization that would affect her interests, the attorney would not have a disqualifying financial interest in the matter. However, the attorney must consider, under the requirements of § 2635.502 of this chapter, whether his impartiality would be questioned if he continues to work on the case.

Example 2: A special Government employee (SGE) whose principal employment is as a researcher at a major university is appointed to serve on an advisory committee that will evaluate the safety and effectiveness of a new medical device to regulate arrhythmic heartbeats. The device is being developed by Alpha Medical Inc., a company which also has contracted with the SGE's university to assist in developing another medical device related to

kidney dialysis. There is no evidence that the advisory committee's determinations concerning the medical device under review will affect Alpha Medical's contract with the university to develop the kidney dialysis device. The SGE may participate in the committee's deliberations because those deliberations will not have a direct and predictable effect on the financial interests of the researcher or his employer.

Example 3: The SGE in the preceding example is instead asked to serve on an advisory committee that has been convened to conduct a preliminary evaluation of the new kidney dialysis device developed by Alpha Medical under contract with the employee's university. Alpha's contract with the university requires the university to undertake additional testing of the device to address issues raised by the committee during its review. The committee's actions will have a direct and predictable effect on the university's financial interest.

Example 4: An engineer at the Environmental Protection Agency (EPA) was formerly employed by Waste Management, Inc., a corporation subject to EPA's regulations concerning the disposal of hazardous waste materials. Waste Management is a large corporation, with less than 5% of its profits derived from handling hazardous waste materials. The engineer has a vested interest in a defined benefit pension plan sponsored by Waste Management which guarantees that he will receive payments of $500 per month beginning at age 62. As an employee of EPA, the engineer has been assigned to evaluate Waste Management's compliance with EPA hazardous waste regulations. There is no evidence that the engineer's monitoring activities will affect Waste Management's ability or willingness to pay his pension benefits when he is entitled to receive them at age 62. Therefore, the EPA's monitoring activities will not have a direct and predictable effect on the employee's financial interest in his Waste Management pension. However, the engineer should consider whether, under the standards set forth in 5 CFR 2635.502, a reasonable person would question his impartiality if he acts in a matter in which Waste Management is a party.

(b) *Disqualifying financial interests.* For purposes of 18 U.S.C. 208(a) and this part, the term financial interest means the potential for gain or loss to the employee, or other person specified in section 208, as a result of governmental action on the particular matter. The disqualifying financial interest might arise from ownership of certain financial instruments or investments such as stock, bonds, mutual funds, or real estate. Additionally, a disqualifying financial interest might derive from a salary, indebtedness, job offer, or any similar interest that may be affected by the matter.

Example 1: An employee of the Department of the Interior owns transportation bonds issued by the State of Minnesota. The proceeds of the bonds will be used to fund improvements to certain State highways. In her official position, the employee is evaluating an application from Minnesota for a grant to support a State wildlife refuge. The employee's ownership of the transportation bonds does not create a disqualifying financial interest in Minnesota's application for wildlife funds because approval or disapproval of the grant will not in any way affect the current value of the bonds or have a direct and predictable effect on the State's ability or willingness to honor its obligation to pay the bonds when they mature.

Example 2: An employee of the Bureau of Land Management owns undeveloped land adjacent to Federal lands in New Mexico. A portion of the Federal land will be leased by the Bureau to a mining company for exploration and development, resulting in an increase in the value of the surrounding privately owned land, including that owned by the employee. The employee has a financial interest in the lease of the Federal land to the mining company and, therefore, cannot participate in Bureau matters involving the lease unless he obtains an individual waiver pursuant to 18 U.S.C. 208(b)(1).

Example 3: A special Government employee serving on an advisory committee studying the safety and effectiveness of a new arthritis drug is a practicing physician with a specialty in treating arthritis. The drug being studied by the committee would be a low cost alternative to current treatments for arthritis. If the drug is ultimately approved, the physician will be able to prescribe the less expensive drug. The physician does not own stock in, or hold any position, or have any business relationship with the company developing the drug. Moreover, there is no indication that the availability of a less expensive treatment for arthritis will increase the volume and profitability of the doctor's private practice. Accordingly, the physician has no disqualifying financial interest in the actions of the advisory committee.

(c) *Interests of others.* The financial interests of the following persons will serve to disqualify an employee to the same extent as the employee's own interests:

(1) The employee's spouse;

(2) The employee's minor child;

(3) The employee's general partner;

(4) An organization or entity which the employee serves as officer, director, trustee, general partner, or employee; and

(5) A person with whom the employee is negotiating for, or has an arrangement concerning, prospective employment.

Example 1: An employee of the Consumer Product Safety Commission (CPSC) has two minor children who have inherited shares of stock from their grandparents in a company that manufactures small appliances. Unless an exemption is applicable under § 2640.202 or he obtains a waiver under 18 U.S.C. 208(b)(1), the employee is disqualified from participating in a CPSC proceeding to require the manufacturer to remove a defective appliance from the market.

Example 2: A newly appointed employee of the Department of Housing and Urban Development (HUD) is a general partner with three former business associates in a partnership that owns a travel agency. The employee knows that his three general partners are also partners in another partnership that owns a HUD-subsidized housing project. Unless he receives a waiver pursuant to 18 U.S.C. 208(b)(1) permitting him to act, the employee must disqualify himself from particular matters involving the HUD-subsidized project which his general partners own.

Example 3: The spouse of an employee of the Department of Health and Human Services (HHS) works for a consulting firm that provides support services to colleges and universities on research projects they are conducting under grants from HHS. The spouse is a salaried employee who has no direct ownership interest in the firm such as through stockholding, and the award of a grant to a particular university will have no direct and predictable effect on his continued employment or his salary. Because the award of a grant will not affect the spouse's financial interest, section 208 would not bar the HHS employee from participating in the award of a grant to a university to which the consulting firm will provide services. However, the employee should consider whether her participation in the award of the grant would be barred under the impartiality provision in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR 2635.502.

(d) *Disqualification.* Unless the employee is authorized to participate in the particular matter by virtue of an exemption or waiver described in subpart B or subpart C of this part, or the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignments should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics, is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement, or is required to do so by agency supplemental regulation issued pursuant to 5 CFR 2635.105. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: The supervisor of an employee of the Department of Education asks the employee to attend a meeting on his behalf on developing national standards for science education in secondary schools. When the employee arrives for the meeting, she realizes one of the participants is the president of Education Consulting Associates (ECA), a firm which has been awarded a contract to prepare a bulletin describing the Department's policies on science education standards. The employee's spouse has a subcontract with ECA to provide the graphics and charts that will be used in the bulletin. Because the employee realizes that the meeting will involve matters relating to the production of the bulletin, the employee properly decides that she must disqualify herself from participating in the discussions. After withdrawing from the meeting, the employee should notify her supervisor about the reason for her disqualification. She may elect to put her disqualification statement in writing, or to simply notify her supervisor orally. She may also elect to notify appropriate coworkers about her need to disqualify herself from this matter.

(e) *Divestiture of a disqualifying financial interest.* Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, an employee is no longer prohibited from acting in the particular matter.

(1) *Voluntary divestiture.* An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) *Directed divestiture.* An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a) of this chapter, or if the agency determines in accordance with § 2635.403(b) of this chapter that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.

(3) *Eligibility for special tax treatment.* An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(f) *Official duties that give rise to potential conflicts.* Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

§ 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans.

(a) *Diversified mutual funds and unit investment trusts.* An employee may participate in any particular matter affecting one or more holdings of a diversified mutual fund or a diversified unit investment trust where the disqualifying financial interest in the matter arises because of the ownership of an interest in the fund or trust.

Example 1: An employee owns shares worth $100,000 in several mutual funds whose portfolios contain stock in a small computer company. Each mutual fund prospectus describes the fund as a ''management company,'' but does not characterize the fund as having a policy of concentrating its investments in any particular industry, business, single country (other than the U.S.) or bonds of a single State. The employee may participate in agency matters affecting the computer company.

Example 2: A nonsupervisory employee of the Department of Energy owns shares in a mutual fund that expressly concentrates its holdings in the stock of utility companies. The employee may not rely on the exemption in paragraph (a) of this section to act in matters affecting a utility company whose stock is part of the mutual fund's portfolio because the fund is not a diversified fund as defined in § 2640.102(a). The employee may, however, seek an individual waiver under 18 U.S.C. 208(b)(1) permitting him to act. Moreover, depending upon the value of the employee's interest in the fund and the type of particular matter in which he would participate, one of the exemptions at § 2640.202(a) or (b) for interests arising from publicly traded securities may be applicable.

(b) *Sector mutual funds.* An employee may participate in any particular matter affecting one or more holdings of a sector mutual fund where the affected holding is not invested in the sector in which the fund concentrates, and where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund.

Example 1: An employee of the Federal Reserve owns shares in the mutual fund described in the preceding example. In addition to holdings in utility companies, the mutual fund contains stock in certain regional banks and bank holding companies whose financial interests would be affected by an investigation in which the Federal Reserve employee would participate. The employee is not disqualified from participating in the investigation because the banks that would be affected are not part of the sector in which the fund concentrates.

(c) *Employee benefit plans.* An employee may participate in:

(1) Any particular matter affecting one or more holdings of an employee benefit plan, where the disqualifying financial interest in the matter arises from membership in:

(i) The Thrift Savings Plan for Federal employees described in 5 U.S.C. 8437;

(ii) A pension plan established or maintained by a State government or any political subdivision of a State government for its employees; or

(iii) A diversified employee benefit plan, *provided:*

(A) The investments of the plan are administered by an independent trustee, and the employee, or other person specified in section 208(a) does not participate in the selection of the plan's investments or designate specific plan investments (except for directing that contributions be divided among several different categories of investments, such as stocks, bonds or mutual funds, which are available to plan participants); and

(B) The plan is not a profit-sharing or stock bonus plan.

Note to paragraph (a)(1): Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing plans for purposes of this section. However, for the exemption to apply, 401(k) plans must meet the requirements of paragraph (c)(1)(iii)(A) of this section.

(2) Particular matters of general applicability, such as rulemaking, affecting the State or local government sponsor of a State or local government pension plan described in paragraph (c)(1)(ii) of this section where the disqualifying financial interest in the matter arises because of participation in the plan.

Example 1: An attorney terminates his position with a law firm to take a position with the Department of Justice. As a result of his employment with the firm, the employee has interests in a 401(k) plan, the assets of which are invested primarily in stocks chosen by an independent financial management firm. He also participates in a

defined contribution pension plan maintained by the firm, the assets of which are stocks, bonds, and financial instruments. The plan is managed by an independent trustee. Assuming that the manager of the pension plan has a written policy of diversifying plan investments, the employee may act in matters affecting the plan's holdings. The employee may also participate in matters affecting the holdings of his 401(k) plan if the individual financial management firm that selects the plan's investments has a written policy of diversifying the plan's assets. Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing or stock bonus plans for purposes of this part.

Example 2: An employee of the Department of Agriculture who is a former New York State employee has a vested interest in a pension plan established by the State of New York for its employees. She may participate in an agency matter that would affect a company whose stock is in the pension plan's portfolio. She also may participate in a matter of general applicability affecting all States, including the State of New York, such as the drafting and promulgation of a rule requiring States to expend additional resources implementing the Food Stamp program. Unless she obtains an individual waiver under 18 U.S.C. 208(b)(1), she may not participate in a matter involving the State of New York as a party, such as an application by the State for additional Federal funding for administrative support services, if that matter would affect the State's ability or willingness to honor its obligation to pay her pension benefits.

§ 2640.202 Exemptions for interests in securities.

(a) *De minimis exemption for matters involving parties.* An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government, or are municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all entities does not exceed $5,000.

Example 1: An employee owns 100 shares of publicly traded stock valued at $3,000 in XYZ Corporation. As part of his official duties, the employee is evaluating bids for performing computer maintenance services at his agency and discovers that XYZ Corporation is one of the companies that has submitted a bid. The employee is not required to recuse himself from continuing to evaluate the bids.

Example 2: In the preceding example, the employee and his spouse each own 100 shares of stock in XYZ Corporation, resulting in ownership of $6,000 worth of stock by the employee and his spouse. The exemption in paragraph (a) of this section would not permit the employee to participate in the evaluation of bids because the aggregate market value of the holdings of the employee, spouse and minor children in XYZ Corporation exceeds $5,000. The employee could, however, seek an individual waiver under 18 U.S.C. 208(b)(1) in order to participate in the evaluation of bids.

Example 3: An employee is assigned to monitor XYZ Corporation's performance of a contract to provide computer maintenance services at the employee's agency. At the time the employee is first assigned these duties, he owns publicly traded stock in XYZ Corporation valued at less than $5,000. During the time the contract is being performed, however, the value of the employee's stock increases to $7,500. When the employee knows that the value of his stock exceeds $5,000, he must disqualify himself from any further participation in matters affecting XYZ Corporation or seek an individual waiver under 18 U.S.C. 208(b)(1). Alternatively, the employee may divest the portion of his XYZ stock that exceeds $5,000. This can be accomplished through a standing order with his broker to sell when the value of the stock exceeds $5,000.

(b) *De minimis exemption for matters of general applicability.* An employee may participate in any particular matter of general applicability, such as rulemaking, in which the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

(i) The securities are publicly traded, or are municipal securities, the market value of which does not exceed:

(A) $25,000 in any one such entity; and

(B) $50,000 in all affected entities; or

(ii) The securities are long-term Federal Government securities, the market value of which does not exceed $50,000.

(2) For purposes of this paragraph (b), the value of securities owned by the employee, his spouse, and minor children must be aggregated in applying the exemption.

Example 1: The Bureau of Export Administration at the Department of Commerce is in the process of formulating a regulation concerning exportation of portable computers. The regulation will affect all domestic companies that sell portable computers. An employee of the Department who is assisting in drafting the regulation owns $17,000 worth of stock in CompAmerica and $20,000 worth of stock in XYZ Computer Inc. Even though the employee owns $37,000 worth of stock in companies that will be affected by the regulation, she may participate in drafting the regulation because the value of the securities she owns does not exceed $25,000 in any one affected company and the total value of stock owned in all affected companies does not exceed $50,000.

Example 2: A health scientist administrator employed in the Public Health Service at the Department of Health and Human Services is assigned to serve on a Department-wide task force that will recommend changes in how Medicare reimbursements will be made to health care providers. The employee owns $10,000 worth of shares in a sector mutual fund invested primarily in health-related companies such as pharmaceuticals, developers of medical instruments and devices, managed care health organizations, and acute care hospitals. Because the fund is not a ''diversified mutual fund'' as defined in § 2640.102(a), the exemption at § 2640.201(a) is not applicable. However, because the fund is a ''publicly traded security'' as defined in § 2640.102(p), the exemption for financial interests arising from ownership of a de minimis amount of securities at paragraph (b) of this section will permit the employee to participate on the task force.

(c) *Exemption for certain Federal Government securities.* An employee may participate in any particular matter in which the disqualifying financial interest arises from the ownership of short-term Federal Government securities or from U.S. Savings bonds.

(d) *Exemption for interests of tax-exempt organizations.* An employee may participate in any particular matter in which the disqualifying financial interest arises from the ownership of publicly traded or municipal securities, or long-term Federal Government securities by an organization which is tax-exempt pursuant to 26 U.S.C. 501(c)(3) or (4), and of which the employee is an unpaid officer, director, or trustee, or an employee, if:

(1) The matter affects only the organization's investments, not the organization directly;

(2) The employee plays no role in making investment decisions for the organization, except for participating in the decision to invest in several different categories of investments such as stocks, bonds, or mutual funds; and

(3) The organization's only relationship to the issuer, other than that which arises from routine commercial transactions, is that of investor.

Example 1: An employee of the Federal Reserve is a director of the National Association to Save Trees (NAST), an environmental organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. The employee knows that NAST has an endowment fund that is partially invested in the publicly traded stock of Computer Inc. The employee's position at the Federal Reserve involves the procurement of computer software, including software marketed by Computer Inc. The employee may participate in the procurement of software from Computer Inc. provided that he is not involved in selecting NAST's investments, and that NAST has no relationship to Computer Inc. other than as

an investor in the company and routine purchaser of Computer Inc. software.

(e) *Exemption for certain interests of general partners.* An employee may participate in any particular matter in which the disqualifying financial interest arises from:

(1) The ownership of publicly traded securities, long-term Federal Government securities, or municipal securities by the employee's general partner, *provided*:

(i) Ownership of the securities is not related to the partnership between the employee and his general partner, and

(ii) The value of the securities does not exceed $200,000; or

(2) Any interest of the employee's general partner if the employee's relationship to the general partner is as a limited partner in a partnership that has at least 100 limited partners.

Example 1: An employee of the Department of Transportation is a general partner in a partnership that owns commercial property. The employee knows that one of his partners owns stock in an aviation company valued at $100,000 because the stock has been pledged as collateral for the purchase of the commercial property by the partnership. In the absence of an individual waiver under 18 U.S.C. 208(b)(1), the employee may not act in a matter affecting the aviation company. Because the stock has been pledged as collateral, ownership of the securities is related to the partnership between the employee and his general partner.

Example 2: An employee of the Pension Benefit Guaranty Corporation (PBGC) has a limited partnership interest in Ambank Partners, a large partnership with more than 500 limited partners. The partnership assets are invested in the securities of various financial institutions. Ambank's general partner is Capital Investment Services, an investment firm whose pension plan for its own employees is being examined by the PBGC for possible unfunded liabilities. Even though the employee's general partner (Capital Investment Services) has a financial interest in PBGC's review of the pension plan, the employee may participate in the review because his relationship with his general partner is that of a limited partner in a partnership that has at least 100 limited partners.

§ 2640.203 Miscellaneous exemptions.

(a) *Hiring decisions.* An employee may participate in a hiring decision involving an applicant who is currently employed by a corporation that issues publicly traded securities, if the disqualifying financial interest arises from:

(1) Ownership of publicly traded securities issued by the corporation; or

(2) Participation in a vested pension plan sponsored by the corporation.

(b) *Employees on leave from institutions of higher education.* An employee on a leave of absence from an institution of higher education may participate in any particular matter of general applicability affecting the financial interests of the institution from which he is on leave, *provided* that the matter will not have a special or distinct effect on that institution other than as part of a class.

Example 1: An employee at the Department of Defense (DOD) is on a leave of absence from his position as a tenured Professor of Engineering at the University of California (UC) at Berkeley. While at DOD, he is assigned to assist in developing a regulation which will contain new standards for the oversight of grants given by DOD. Even though the University of California at Berkeley is a DOD grantee, and will be affected by these new monitoring standards, the employee may participate in developing the standards because UC Berkeley will be affected only as part of the class of all DOD grantees. However, if the new standards would affect the employee's own financial interest, such as by affecting his tenure or his salary, the employee could not participate in the matter unless he first obtains an individual waiver under section 208(b)(1).

Example 2: An employee on leave from a university could not participate in the development of an agency program of grants specifically designed to facilitate research in jet propulsion systems where the employee's university is one of just two or three universities likely to receive a grant under the new program. Even though the grant announcement is open to all universities, the employee's university is among the very few known to have facilities and equipment adequate to conduct the research. The matter would have a distinct effect on the institution other than as part of a class.

(c) *Multi-campus institutions of higher education.* An employee may participate in any particular matter affecting one campus of a State multi-campus institution of higher education, if the employee's disqualifying financial interest is employment in a position with no multi-campus responsibilities at a separate campus of the same multi-campus institution.

Example 1: A special Government employee (SGE) member of an advisory committee convened by the National Science Foundation is a full-time professor in the School of Engineering at one campus of a State university. The SGE may participate in formulating the committee's recommendation to award a grant to a researcher at another campus of the same State university system.

Example 2: A member of the Board of Regents at a State university is asked to serve on an advisory committee established by the Department of Health and Human Services to consider applications for grants for human genome research projects. An application from another university that is part of the same State system will be reviewed by the committee. Unless he receives an individual waiver under section 208(b)(1) or (b)(3), the advisory committee member may not participate in matters affecting the second university that is part of the State system because as a member of the Board of Regents, he has duties and responsibilities that affect the entire State educational system.

(d) *Exemptions for financial interests arising from Federal Government employment or from Social Security or veterans' benefits.* An employee may participate in any particular matter where the disqualifying financial interest arises from Federal Government or Federal Reserve Bank salary or benefits, or from Social Security or veterans' benefits, except an employee may not:

(1) Make determinations that individually or specially affect his own salary and benefits; or

(2) Make determinations, requests, or recommendations that individually or specially relate to, or affect, the salary or benefits of any other person specified in section 208.

Example 1: An employee of the Office of Management and Budget may vigorously and energetically perform the duties of his position even though his outstanding performance would result in a performance bonus or other similar merit award.

Example 2: A policy analyst at the Defense Intelligence Agency may request promotion to another grade or salary level. However, the analyst may not recommend or approve the promotion of her general partner to the next grade.

Example 3: An engineer employed by the National Science Foundation may request that his agency pay the registration fees and appropriate travel expenses required for him to attend a conference sponsored by the Engineering Institute of America. However, the employee may not approve payment of his own travel expenses and registration fees unless he has been delegated, in advance, authority to make such approvals in accordance with agency policy.

Example 4: A GS–14 attorney at the Department of Justice may review and make comments about the legal sufficiency of a bill to raise the pay level of all Federal employees paid under the General Schedule even though her own pay level, and that of her spouse who works at the Department of Labor, would be raised if the bill were to become law.

Example 5: An employee of the Department of Veterans Affairs (VA) may assist in drafting a regulation that will provide expanded hospital benefits for veterans, even though he himself is a veteran who would be eligible for treatment in a hospital operated by the VA.

Example 6: An employee of the Office of Personnel Management may participate in discussions with various health insurance providers to formulate the package of benefits that will be available to Federal employees who participate in the Government's Federal Employees Health Benefits Program, even though the employee will obtain health insurance from one of these providers through the program.

Example 7: An employee of the Federal Supply Service Division of the General Services Administration (GSA) may participate in GSA's evaluation of the feasibility of privatizing the entire Federal Supply Service, even though the employee's own position would be eliminated if the Service were privatized.

Example 8: Absent an individual waiver under section 208(b)(1), the employee in the preceding example could not participate in the implementation of a GSA plan to create an employee-owned private corporation which would carry out Federal Supply Service functions under contract with GSA. Because implementing the plan would result not only in the elimination of the employee's Federal position, but also in the creation of a new position in the new corporation to which the employee would be transferred, the employee would have a disqualifying financial interest in the matter arising from other than Federal salary and benefits, or Social Security or veterans benefits.

Example 9: A career member of the Senior Executive Service (SES) at the Internal Revenue Service (IRS) may serve on a performance review board that makes recommendations about the performance awards that will be awarded to other career SES employees at the IRS. The amount of the employee's own SES performance award would be affected by the board's recommendations because all SES awards are derived from the same limited pool of funds. However, the employee's activities on the board involve only recommendations, and not determinations that individually or specially affect his own award. Additionally, 5 U.S.C. 5384(c)(2) requires that a majority of the board's members be career SES employees.

Example 10: In carrying out a reorganization of the Office of General Counsel (OGC) of the Federal Trade Commission, the Deputy General Counsel is asked to determine which of five Senior Executive Service (SES) positions in the OGC to abolish. Because her own position is one of the five SES positions being considered for elimination, the matter is one that would individually or specially affect her own salary and benefits and, therefore, the Deputy may not decide which position should be abolished.

Note to paragraph (d): This exemption does not permit an employee to take any action in violation of any other statutory or regulatory requirement, such as the prohibition on the employment of relatives at 5 U.S.C. 3110.

(e) *Commercial discount and incentive programs.* An employee may participate in any particular matter affecting the sponsor of a discount, incentive, or other similar benefit program if the disqualifying financial interest arises because of participation in the program, *provided:*

(1) The program is open to the general public; and

(2) Participation in the program involves no other financial interest in the sponsor, such as stockholding.

Example 1: An attorney at the Pension Benefit Guaranty Corporation who is a member of a frequent flier program sponsored by Alpha Airlines may assist in an action against Alpha for failing to make required payments to its employee pension fund, even though the agency action will cause Alpha to disband its frequent flier program.

(f) *Mutual insurance companies.* An employee may participate in any particular matter affecting a mutual insurance company if the disqualifying financial interest arises because of an interest as a policyholder, unless the matter would affect the company's ability to pay claims required under the terms of the policy or to pay the cash value of the policy.

Example 1: An administrative law judge at the Department of Labor receives dividends from a mutual insurance company which he takes in the form of reduced premiums on his life insurance policy. The amount of the dividend is based upon the company's overall profitability. Nevertheless, he may preside in a Department hearing involving a major corporation insured by the same company even though the insurance company will have to pay the corporation's penalties and other costs if the Department prevails in the hearing.

Example 2: An employee of the Department of Justice is assigned to prosecute a case involving the fraudulent practices of an issuer of junk bonds. While developing the facts pertinent to the case, the employee learns that the mutual life insurance company from which he holds a life insurance policy has invested heavily in these junk bonds. If the Government succeeds in its case, the bonds will be worthless and the corresponding decline in the insurance company's investments will impair the company's ability to pay claims under the policies it has issued. The employee may not continue assisting in the prosecution of the case unless he obtains an individual waiver pursuant to section 208(b)(1).

(g) *Exemption for employment interests of special Government employees serving on advisory committees.* A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. app.) may participate in any particular matter of general applicability where the disqualifying financial interest arises from his non-Federal employment or non-Federal prospective employment, *provided* that the matter will not have a special or distinct effect on the employee or employer other than as part of a class. For purposes of this paragraph, ''disqualifying financial interest'' arising from non-Federal employment does not include the interests of a special Government employee arising from the ownership of stock in his employer or prospective employer.

Example 1: A chemist employed by a major pharmaceutical company has been appointed to serve on an advisory committee established to develop recommendations for new standards for AIDS vaccine trials involving human subjects. Even though the chemist's employer is in the process of developing an experimental AIDS vaccine and therefore will be affected by the new standards, the chemist may participate in formulating the advisory committee's recommendations. The chemist's employer will be affected by the new standards only as part of the class of all pharmaceutical companies and other research entities that are attempting to develop an AIDS vaccine.

Example 2: The National Cancer Institute (NCI) has established an advisory committee to evaluate a university's performance of an NCI grant to study the efficacy of a newly developed breast cancer drug. An employee of the university may not participate in the evaluation of the university's performance because it is not a matter of general applicability.

Example 3: An engineer whose principal employment is with a major Department of Defense (DOD) contractor is appointed to serve on an advisory committee established by DOD to develop concepts for the next generation of laser-guided missiles. The engineer's employer, as well as a number of other similar companies, has developed certain missile components for DOD in the past, and has the capability to work on aspects of the newer missile designs under consideration by the committee. The engineer owns $20,000 worth of stock in his employer. Because the exemption for the employment interests of special Government employees serving on advisory committees does not extend to financial interests arising from the ownership of stock, the engineer may not participate in committee matters affecting his employer unless he receives an individual waiver under section 208(b)(1) or (b)(3), or determines whether the exemption for interests in securities at § 2640.202(b) applies.

(h) *Directors of Federal Reserve Banks.* A Director of a Federal Reserve Bank or a branch of a Federal Reserve Bank may participate in the following matters, even though they may be particular matters in which he, or any other person specified in section 208(a), has a disqualifying financial interest:

(1) Establishment of rates to be charged for all advances and discounts by Federal Reserve Banks;

(2) Consideration of monetary policy matters, regulations, statutes and proposed or pending legislation, and other matters of broad applicability intended to have uniform application to banks within the Reserve Bank district;

(3) Approval or ratification of extensions of credit, advances or discounts to a depository institution that has not been determined to be in a

hazardous financial condition by the President of the Reserve Bank; or

(4) Approval or ratification of extensions of credit, advances or discounts to a depository institution that has been determined to be in a hazardous financial condition by the President of the Reserve Bank, *provided that* the disqualifying financial interest arises from the ownership of stock in, or service as an officer, director, trustee, general partner or employee, of an entity other than the depository institution, or its parent holding company or subsidiary of such holding company.

(i) *Medical products.* A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. app.) may participate in Federal advisory committee matters concerning medical products if the disqualifying financial interest arises from:

(1) Employment with a hospital or other similar medical facility whose only interest in the medical product or device is purchase of it for use by, or sale to, its patients; or

(2) The use or prescription of medical products for patients.

(j) *Nonvoting members of standing technical advisory committees established by the Food and Drug Administration.* A special Government employee serving as a nonvoting representative member of an advisory committee established by the Food and Drug Administration pursuant to the requirements of the Federal Advisory Committee Act (5 U.S.C. app.) and appointed under a statutory authority requiring the appointment of representative members, may participate in any particular matter affecting a disqualifying financial interest in the class which the employee represents. Nonvoting representative members of Food and Drug Administration advisory committees are described in 21 CFR 14.80(b)(2), 14.84, 14.86, and 14.95(a).

Example 1: The FDA's Medical Devices Advisory Committee is established pursuant to 21 U.S.C. 360c(b), which requires that each panel of the Committee include one nonvoting industry representative and one nonvoting consumer representative. An industry representative on the Ophthalmic Devices Panel of this Committee has been appointed as a special Government employee, in accordance with the procedures described at 14 CFR 14.84. The special Government employee may participate in Panel discussions concerning the premarket approval application for a silicone posterior chamber intraocular lens manufactured by MedInc, even though she is employed by, and owns stock in, another company that manufactures a competing product. However, a consumer representative who serves as a special Government employee on the same Panel may not participate in Panel discussions if he owns $30,000 worth of stock in MedInc unless he first obtains an individual waiver under 18 U.S.C. 208 (b)(1) or (b)(3).

(k) *Employees of the Tennessee Valley Authority.* An employee of the Tennessee Valley Authority (TVA) may participate in developing or approving rate schedules or similar matters affecting the general cost of electric power sold by TVA, if the disqualifying financial interest arises from use of such power by the employee or by any other person specified in section 208(a).

§ 2640.204 Prohibited financial interests.

None of the exemptions set forth in §§ 2640.201, 2640.202, or 2640.203 apply to any financial interest held or acquired by an employee, his spouse, or minor child in violation of a statute or agency supplemental regulation issued in accordance with 5 CFR 2635.105, or that is otherwise prohibited under 5 CFR 2635.403(b).

Example 1: The Office of the Comptroller of the Currency (OCC), in a regulation that supplements part 2635 of this chapter, prohibits certain employees from owning stock in commercial banks. If an OCC employee purchases stock valued at $2,000 in contravention of the regulation, the exemption at § 2640.202(a) for interests arising from the ownership of no more than $5,000 worth of publicly traded stock will not apply to the employee's participation in matters affecting the bank.

§ 2640.205 Employee responsibility.

Prior to taking official action in a matter which an employee knows would affect his financial interest or the interest of another person specified in 18 U.S.C. 208(a), an employee must determine whether one of the exemptions in §§ 2640.201, 2640.202, or 2640.203 would permit his action notwithstanding the existence of the disqualifying interest. An employee who is unsure whether an exemption is applicable in a particular case, should consult an agency ethics official prior to taking action in a particular matter.

§ 2640.206 Existing agency exemptions.

An employee who, prior to January 17, 1997, acted in an official capacity in a particular matter in which he had a financial interest, will be deemed to have acted in accordance with applicable regulations if he acted in reliance on an exemption issued by his employing Government agency pursuant to 18 U.S.C. 208(b)(2), as in effect prior to November 30, 1989.

Subpart C—Individual Waivers

§ 2640.301 Waivers issued pursuant to 18 U.S.C. 208(b)(1).

(a) *Requirements for issuing an individual waiver under 18 U.S.C. 208(b)(1).* Pursuant to 18 U.S.C. 208(b)(1), an agency may determine in an individual case that a disqualifying financial interest in a particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Upon making that determination, the agency may then waive the employee's disqualification notwithstanding the financial interest, and permit the employee to participate in the particular matter. Waivers issued pursuant to section 208(b)(1) should comply with the following requirements:

(1) The disqualifying financial interest, and the nature and circumstances of the particular matter or matters, must be fully disclosed to the Government official responsible for appointing the employee to his position (or other Government official to whom authority to issue such a waiver for the employee has been delegated);

(2) The waiver must be issued in writing by the Government official responsible for appointing the employee to his position (or other Government official to whom the authority to issue such a waiver for the employee has been delegated);

(3) The waiver should describe the disqualifying financial interest, the particular matter or matters to which it applies, the employee's role in the matter or matters, and any limitations on the employee's ability to act in such matters;

(4) The waiver shall be based on a determination that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Statements concerning the employee's good character are not material to, nor a basis for making, such a decision;

(5) The waiver must be issued prior to the employee taking any action in the matter or matters; and

(6) The waiver may apply to both present and future financial interests, provided the interests are described with sufficient specificity.

Note to paragraph (a): The disqualifying financial interest, the particular matter or matters to which the waiver applies, and the employee's role in such matters do not need to be described with any particular degree of specificity. For example, if a waiver were to apply to all matters which an employee would undertake as part of his official duties,

the waiver document would not have to enumerate those duties. The information contained in the waiver, however, should provide a clear understanding of the nature and identity of the disqualifying financial interest, the matters to which the waiver will apply, and the employee's role in such matters.

(b) *Agency determination concerning substantiality of the disqualifying financial interest.* In determining whether a disqualifying financial interest is sufficiently substantial to be deemed likely to affect the integrity of the employee's services to the Government, the responsible official may consider the following factors:

(1) The type of interest that is creating the disqualification (e.g. stock, bonds, real estate, other securities, cash payment, job offer, or enhancement of a spouse's employment);

(2) The identity of the person whose financial interest is involved, and if the interest is not the employee's, the relationship of that person to the employee;

(3) The dollar value of the disqualifying financial interest, if it is known or can be estimated (e.g. the amount of cash payment which may be gained or lost, the salary of the job which will be gained or lost, the predictable change in either the market value of the stock or the actual or potential profit or loss or cost of the matter to the company issuing the stock, the change in the value of real estate or other securities);

(4) The value of the financial instrument or holding from which the disqualifying financial interest arises (e.g. the face value of the stock, bond, other security or real estate) and its value in relationship to the individual's assets. If the disqualifying financial interest is that of a general partner or organization specified in section 208, this information must be provided only to the extent that it is known by the employee; and

(5) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter.

(6) Other factors which may be taken into consideration include:

(i) The sensitivity of the matter;

(ii) The need for the employee's services in the particular matter; and

(iii) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that the integrity of the employee's services would be questioned by a reasonable person.

§ 2640.302 Waivers issued pursuant to 18 U.S.C. 208(b)(3).

(a) *Requirements for issuing an individual waiver under 18 U.S.C. 208(b)(3).* Pursuant to 18 U.S.C. 208(b)(3), an agency may determine in an individual case that the prohibition of 18 U.S.C. 208(a) should not apply to a special Government employee serving on, or an individual being considered for, appointment to an advisory committee established under the Federal Advisory Committee Act, notwithstanding the fact that the individual has one or more financial interests that would be affected by the activities of the advisory committee. The agency's determination must be based on a certification that the need for the employee's services outweighs the potential for a conflict of interest created by the financial interest involved. Waivers issued pursuant to 18 U.S.C. 208(b)(3) should comply with the following requirements:

(1) The advisory committee upon which the individual is serving, or will serve, is an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. app.;

(2) The waiver must be issued in writing by the Government official responsible for the individual's appointment (or other Government official to which authority to issue such waivers has been delegated) after the official reviews the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978;

(3) The waiver must include a certification that the need for the individual's services on the advisory committee outweighs the potential for a conflict of interest;

(4) The facts upon which the certification is based should be fully described in the waiver, including the nature of the financial interest, and the particular matter or matters to which the waiver applies;

(5) The waiver should describe any limitations on the individual's ability to act in the matter or matters;

(6) The waiver must be issued prior to the individual taking any action in the matter or matters; and

(7) The waiver may apply to both present and future financial interests of the individual, provided the interests are described with sufficient specificity.

(b) *Agency certification concerning need for individual's services.* In determining whether the need for an individual's services on an advisory committee outweighs the potential for a conflict of interest created by the disqualifying financial interest, the responsible official may consider the following factors:

(1) The type of interest that is creating the disqualification (e.g. stock, bonds, real estate, other securities, cash payment, job offer, or enhancement of a spouse's employment);

(2) The identity of the person whose financial interest is involved, and if the interest is not the individual's, the relationship of that person to the individual;

(3) The uniqueness of the individual's qualifications;

(4) The difficulty of locating a similarly qualified individual without a disqualifying financial interest to serve on the committee;

(5) The dollar value of the disqualifying financial interest, if it is known or can be estimated (e.g. the amount of cash payment which may be gained or lost, the salary of the job which will be gained or lost, the predictable change in either the market value of the stock or the actual or potential profit or loss or cost of the matter to the company issuing the stock, the change in the value of real estate or other securities);

(6) The value of the financial instrument or holding from which the disqualifying financial interest arises (e.g. the face value of the stock, bond, other security or real estate) and its value in relationship to the individual's assets. If the disqualifying financial interest is that of a general partner or organization specified in section 208, this information must be provided only to the extent that it is known by the employee; and

(7) The extent to which the disqualifying financial interest will be affected individually or particularly by the actions of the advisory committee.

§ 2640.303 Consultation and notification regarding waivers.

When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in §§ 2640.301 and 2640.302. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

§ 2640.304 Public availability of agency waivers.

(a) *Availability.* A copy of an agency waiver issued pursuant to 18 U.S.C. 208 (b)(1) or (b)(3) shall be made available upon request to the public by the issuing agency. Public release of waivers shall be in accordance with the procedures set forth in section 105 of the Ethics in Government Act of 1978, as amended. Those procedures are described in 5 CFR 2634.603.

(b) *Limitations on availability.* In making a waiver issued pursuant to 18 U.S.C. 208 (b)(1) or (b)(3) publicly available, an agency:

(1) May withhold from public disclosure any information contained in the waiver that would be exempt from disclosure pursuant to 5 U.S.C. 552; and

(2) Shall withhold from public disclosure information in a waiver issued pursuant to 18 U.S.C. 208(b)(3) concerning an individual's financial interest which is more extensive than that required to be disclosed by the individual in his financial disclosure report under the Ethics in Government Act of 1978, as amended, or which is otherwise subject to a prohibition on public disclosure under law.

[FR Doc. 96–31837 Filed 12–17–96; 8:45 am]

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Federal Register

Wednesday
December 18, 1996

Part IV

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Reopening of Comment Period; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Reopening of comment period.

SUMMARY: On September 20, 1996, the Department of Education published in the Federal Register a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions (34 CFR Part 668) regarding standards of financial responsibility (60 FR 49552–49574). The proposed standards would apply to all institutions that participate in a program authorized by title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs), and to third-party servicers that enter into a contract with a lender or guarantee agency to administer any aspect of that lender's or agency's Federal Family Education Loan (FFEL) programs.

Many commenters responding to the NPRM requested that the Secretary extend the comment period to give institutions, higher education associations, and other interested parties more time to evaluate further the proposed ratio methodology and standards, and to prepare substantive comments and recommendations based on that additional analysis. The Secretary agrees that more time is needed to evaluate the proposed ratio methodology and standards, as well as the proposed rules regarding changes of ownership, and that additional public comment would improve the quality of information available for rulemaking. Therefore, the Secretary is reopening for 60 days the comment period for the following parts of the September 20, 1996 NPRM:

- The proposed Subpart L.
- The proposed Appendix F.
- Paragraphs (e)–(h) of the proposed § 668.23 (the repayment standards formerly contained in § 668.24).

DATES: Comments must be received on or before February 18, 1997.

ADDRESSES: All comments concerning this notice or the notice of proposed rulemaking should be addressed to Mr. David Lorenzo, U.S. Department of Education, P.O. Box 23272, Washington, D.C. 20026, or to the following internet address: fin__resp@ed.gov

FOR FURTHER INFORMATION CONTACT: Mr. David Lorenzo or Mr. John Kolotos, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3045 ROB–3, Washington, D.C. 20202, telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern standard time, Monday through Friday.

Background

On November 29, 1996, the Secretary published final regulations amending §§ 668.15 and 668.23 of the Student Assistance General Provisions. In that document, the Secretary indicated that the Department would reopen the comment period for several parts of the September 20, 1996 NPRM. The parts for which the comment period is reopened are indicated above. The Secretary is not reopening the comment period for those parts of the September 20, 1996 NPRM on which final regulations were published on November 29 and which are not listed above.

The Secretary is particularly interested in receiving comments on the following topics. These topics were originally raised in the NPRM and noted by commenters as areas of special concern. The Secretary is seeking additional comment and recommendations on these issues that more fully reflect the commenters' positions:

- The utility and appropriateness of the proposed ratio methodology for evaluating the financial condition of participating institutions. The Secretary is interested in specific comments on how the various ratios may be improved, as well as comments on the weighting mechanism, strength factors, and composite score standard. The Secretary is particularly interested in suggestions that would improve the way the proposed ratio methodology may be used to judge the financial health of an institution that has not incurred debt, given the fact that an institution may have no debt either because it has avoided debt as a management strategy, or because it is in such poor financial condition that it cannot secure credit.
- Ways in which a public institution may demonstrate that it is backed by the full faith and credit of a state or equivalent governmental entity, as an alternative means under which a public institution may satisfy the statutory requirement that it is financially responsible.
- Ways to streamline the process by which the Secretary determines that an institution may retain or resume participation in title IV, HEA programs during or after a change of ownership. The Secretary is looking for suggestions outlining steps the Department may take to shorten or eliminate funding interruptions to students while protecting title IV, HEA program funds.
- The impact on financial statements of the new accounting standards contained in the Financial Accounting Standards Board's Statements of Financial Accounting Standards 116 and 117. The Secretary particularly requests comments from institutions that have already adopted those new accounting standards.
- Whether the proposed ratio methodology is appropriate for evaluating the financial responsibility of third-party servicers that enter into a contract with a lender or guarantee agency to administer any aspect of that lender's or agency's FFEL programs. Commenters are encouraged to submit concrete suggestions for possible revisions to the proposed ratio methodology and standards, or for an alternative methodology or standards, if the commenters do not agree that the proposed ratio methodology and standards are appropriate for these servicers.
- At present, the Secretary does not have a data base of third-party servicer financial statements to use while evaluating comments on the proposed ratio methodology and standards as they apply to third-party servicers. In order to help the Secretary evaluate comments on the proposed ratio methodology and standards as they apply to third-party servicers, and any suggested revisions or alternatives to the proposed ratio methodology and standards, the Secretary encourages third-party servicers to submit their latest audited financial statement along with their comments.

Dated: December 12, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–32047 Filed 12–17–96; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday
December 18, 1996

Part V

Department of Housing and Urban Development

Public and Indian Housing/Section 8 Moving to Work Demonstration; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4123–N–01]

Notice of Public and Indian Housing/ Section 8 Moving to Work Demonstration

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of demonstration program and invitation to apply.

SUMMARY: This notice invites applications for Public Housing Agencies and Indian Housing Agencies (''HAs'') for participation in the Public and Indian Housing/Section 8 Moving to Work demonstration program. HUD is authorized to select up to 30 HAs that administer the public and Indian housing and Section 8 programs to participate in the demonstration. HUD will select HAs for the demonstration through a merit-based process using the evaluation criteria described in the notice.

The purpose of the demonstration is to give HAs the flexibility to design and test various approaches for providing and administering housing assistance that reduce cost and achieve greater cost effectiveness; provide work incentives to promote resident self-sufficiency; and increase housing choices for low-income families. To achieve these goals, each selected HA will have considerable flexibility in determining how to use Federal funds, as long as the HA meets specified criteria. Furthermore, the selected HAs will be permitted to combine funds from the public and Indian housing operating and modernization programs, and from the Section 8 tenant-based rental assistance program, for uses which meet the purposes of the demonstration. Funds used in the demonstration (whether combined or not) are generally not subject to statutory and regulatory requirements of the public and Indian housing and Section 8 programs.

DATES: Applications submitted in response to this notice must be received by 4:00 p.m., Eastern Time, on March 18, 1997. The submission deadline is firm as to date and time. Submissions will not be accepted by facsimile.

ADDRESSES: Applications submitted in response to this notice must be submitted to: Rod Solomon; Senior Director for Policy and Legislation; Public and Indian Housing; Room 4116; Department of Housing and Urban Development; 451 Seventh St., SW; Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Stephen I. Holmquist; Policy Development Advisor; Office of Policy, Program, and Legislative Initiatives; Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4116, Washington, D.C. 20410; telephone: (202) 708–0713. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The proposed information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The Department has requested emergency clearance of the collection of information described below:

(1) Title of the Information collection proposal: Public Housing/Section 8 Moving to Work Demonstration:

(2) Summary of the collection of information: Each respondent would be required to submit the following information:

1. MTW Plan.

2. Evidence that the HA has provided for citizen and public housing residents participation.

3. Assurances of an established reasonable rent policy.

4. Compliance with the Housing Quality Standards (HQS) (24 CFR 982.401) for housing assisted under MTW.

5. Compliance with reporting requirements.

(3) Description of the need for the information and its proposed use:

To determine that HAs meet the selection criteria required by the Notice, preliminary MTW plan, current PHMAP score, assurances, compliance with HQSs and reporting requirements.

(4) Description of the likely respondents, and proposed frequency of the response to the collection of information:

Respondents will be HAs.

The estimated number of respondents is 50. The proposed frequency of the response to the collection of information is one-time.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden:

Number of respondents: 50

Total burden hours: 4400

(@ 15 hours per response)

Total Estimated Burden Hours: 4400

In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected 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.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within seven (7) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4123) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

I. Introduction

This notice invites public housing agencies (''PHAs'') and Indian housing agencies (''IHAs'') to submit applications for the Public and Indian Housing/Section 8 Moving to Work demonstration program (''MTW''), which was authorized by section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, 110 Stat. 1321) (the ''1996 Appropriations Act''). MTW offers PHAs and IHAs (referred to collectively as ''HAs'') the opportunity to design and test innovative housing and self-sufficiency strategies for low-income families by permitting HAs to combine funds from several HUD programs into a single pool and by exempting HAs from existing public and Indian housing and Section 8 certificate and voucher program rules, as approved by HUD.

HUD is authorized to select up to 30 HAs that administer the public and Indian housing and Section 8 programs to participate in MTW. Under this

notice, HAs will be selected for MTW through a merit-based process using the evaluation criteria described in Section VII. Up to 10 of the 30 HAs will be selected for MTW through a separate competition under the Jobs-Plus initiative described in Section IV of this notice.

HAs may also form consortia of two or more HAs to apply for MTW under a common application and plan. If selected, a consortium will be considered a single MTW selection.

Following the selection of HAs for MTW, HUD will offer training and technical assistance to assist those HAs with further design and evaluation of their demonstration programs. HUD will issue additional guidance with respect to such assistance in the near future.

II. Purpose of the MTW Demonstration

As stated in the 1996 Appropriations Act, the purpose of MTW is to give HAs and HUD the flexibility to design and test various approaches for providing and administering housing assistance that:

(1) Reduce cost and achieve greater cost effectiveness in Federal expenditures;

(2) Give incentives to families with children where the head of household is working; is seeking work; or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and

(3) Increase housing choices for low-income families.

To achieve these goals, the HAs selected for MTW will have considerable flexibility (outside the restrictions of the U.S. Housing Act of 1937, as described in Section III of this notice) in determining how to use program funds to most effectively provide housing and related services to low-income families. However, the 1996 Appropriations Act also requires each HA's MTW application to be developed with public input and to meet certain criteria, including:

- Providing that at least 75% of the families assisted by the HA under the demonstration will be very low-income families (i.e., families with incomes of less than 50% of area median income) at the time they initially receive housing assistance under the demonstration;
- Establishing a reasonable rent policy that is designed to encourage employment and self-sufficiency on the part of participating families;
- Continuing to assist substantially the same total number of low-income families under the demonstration as would have been served had the HA not participated in MTW;
- Maintaining under the demonstration a comparable mix of families, by family size, as would have been assisted had the HA not participated in MTW; and
- Assuring that housing assisted under the demonstration meets housing quality standards established or approved by HUD.

MTW gives HAs and HUD the opportunity to test alternative, locally-designed housing and self-sufficiency strategies for low-income families. In keeping with the nature of MTW as a demonstration program, this notice does not attempt to create a new Federal program, to instruct HAs on how to use the increased flexibility that MTW allows, or to identify all of the potential obstacles that HAs might confront in attempting to exercise their new authority. On the contrary, HUD expects HAs to take the lead in meeting the opportunities and responsibilities presented by MTW to plan and implement innovative programs that effectively address locally identified needs. Further, the capability that an HA demonstrates in this regard will be considered in the evaluation process.

III. Expanded Program Authority Under MTW

The MTW demonstration presents an opportunity to design and implement innovative housing and self-sufficiency strategies by giving HAs and HUD expansive new authority to use HUD assistance flexibly and to design demonstration programs outside the restrictions of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) (the ''1937 Act''), as described below.

(1) *Combining HUD Assistance.* HAs participating in MTW may create a pool of fungible resources using funds from any of the following types of HUD assistance:

(a) Operating subsidies provided under Section 9 of the 1937 Housing Act (42 U.S.C. 1437g);

(b) Modernization funding provided under Section 14 of the 1937 Housing Act (42 U.S.C. 1437l); and

(c) Assistance provided under Section 8 of the 1937 Housing Act for the certificate and voucher programs (42 U.S.C. 1437f).

However, notwithstanding this general authority to combine different types of HUD assistance, as described above, an HA may not so combine any HUD assistance which is required:

(i) To meet existing contractual obligations of the HA to a third party (such as housing assistance payments contracts with owners under the HA's Section 8 certificate or voucher program);

(ii) For payments to other HAs under Section 8 portability billing procedures; or

(iii) To meet particular purposes for which HUD has expressly committed the assistance to the HA (such as a grant under the HOPE VI program or, generally, any assistance under the Section 8 certificate or voucher program committed from appropriations for fiscal years 1996 and 1997).

An HA may not combine different types of HUD assistance prior to the execution of the agreement described in Section VIII of this notice. In addition, at all times during the demonstration, participating HAs must comply with any HUD requirements governing the use of HUD assistance in the demonstration, including management, financial, accounting, or other requirements designed to adequately track and monitor the HA's use of such HUD assistance.

The 1996 Appropriations Act provides that the amount of assistance that an HA receives for public and Indian housing operating subsidies, public and Indian housing modernization grants, and Section 8 assistance for certificates and vouchers will not be diminished by the HA's participation in MTW. This provision does not hold participating HAs harmless from any reductions in federal appropriations. However, given the wide range of approaches to providing housing that MTW allows, as well as its emphasis on HA efforts to promote resident self-sufficiency, HUD recognizes that in some cases an HA's proposal may have implications for the current methods of allocating HUD assistance to that HA. Therefore, HUD will consider reasonable proposals from HAs to modify the current methods for allocating HUD assistance to them where the result would clearly further the purposes of the demonstration without creating significant inequities within the public and Indian housing and Section 8 programs.

Any HUD assistance that an HA is authorized to use in the demonstration must be used in accordance with the HA's HUD-approved MTW plan.

(2) *Applicability of the 1937 Housing Act.* With certain exceptions described below, the 1937 Housing Act, and the regulations promulgated under it, do not apply to the MTW demonstration (whether an HA chooses to combine different types of HUD assistance or not). Rather, HUD assistance must be used by the HA for the purposes required by MTW on such terms and conditions as the HA proposes and HUD approves. Consequently, HUD may grant unprecedented authority to HAs under

MTW to design and implement demonstration programs that have not been possible under the existing public and Indian housing program or the Section 8 certificate and voucher programs.

HUD intends to be flexible and responsive to HA proposals in order to encourage creativity in program design. However, an HA will be authorized to combine assistance and to operate outside of the 1937 Housing Act (and regulations under it) only to the extent approved by HUD under an MTW plan.

Notwithstanding the regulatory flexibility described above, the 1937 Housing Act shall continue to apply to MTW as follows:

(a) The terms ''low-income families'' and ''very low-income families'' shall continue to be defined by reference to Section 3(b)(2) of the 1937 Housing Act (42 U.S.C. 1437a(b)(2)).

(b) Section 18 of the 1937 Housing Act (42 U.S.C. 1437p, as amended by Section 1002(d) of Public Law 104–19, Section 201(b)(1) of Public Law 104–134, and Section 201(b) of Public Law 104–202), which governs demolition and disposition, shall continue to apply to public and Indian housing notwithstanding any use of the housing under MTW.

(c) Section 12 of the 1937 Housing Act (42 U.S.C. 1437j), governing wage rates, shall apply to housing assisted under MTW, other than housing assisted solely due to occupancy by families receiving tenant-based assistance.

IV. Relationship to Jobs-Plus Initiative

Currently, HUD is administering the Jobs-Plus Community Revitalization Initiative for Public Housing Families (''Jobs-Plus'') demonstration in partnership with the Rockefeller Foundation and the Manpower Demonstration Research Corporation as a component of the MTW initiative. The purpose of Jobs-Plus is to develop, in up to 10 selected public housing developments, locally-based approaches to providing employment opportunities to residents in those public housing developments, concentrating the provision of employment opportunities and related services on a high percentage of residents in each of the housing developments. Significant research efforts are planned to be conducted through Jobs-Plus to identify and understand the most promising approaches to increasing employment among families in public housing.

As stated above, one purpose of MTW is to give HAs and HUD the flexibility to design and test various approaches for providing and administering housing assistance that gives employment incentives to families; thus MTW and Jobs-Plus have a shared purpose. And, as with MTW, it is critical to the success of Jobs-Plus that HAs and HUD have the authority and flexibility to implement work incentives and training and employment programs (in conjunction with other local agencies) that are closely coordinated with housing programs. Therefore, to allow developments selected as Jobs-Plus sites to have this regulatory flexibility, HUD will consider housing developments selected as Jobs-Plus sites also to be MTW sites. As a result, of the 30 program slots available for MTW, up to 10 will be reserved for designation under the Jobs-Plus initiative. However, in cases where HUD determines, in its discretion, that the HA which owns a Jobs-Plus site does not have the management capability required by MTW, then HUD may place limits on the degree of regulatory flexibility that MTW would otherwise allow the HA to exercise with respect to that Jobs-Plus site.

Unlike Jobs-Plus, the MTW demonstration is not limited to only one of an HA's housing developments. Therefore, if an HA with a Jobs-Plus site wishes to bring its other housing developments into the MTW demonstration, it must first submit an application and be selected for MTW under this notice. When an HA with a Jobs-Plus site is also selected for MTW, it will be considered a single MTW selection.

V. Reporting Requirements

The 1996 Appropriations Act requires each HA participating in MTW to keep records and submit reports to HUD that document the HA's use of program funds, provide data to assist HUD in assessing the MTW demonstration, and describe and analyze the effect of the HA's activities in addressing the objectives of the HA's MTW plan. As a condition of MTW selection, an HA must provide assurance to HUD that it will comply with these reporting and recordkeeping requirements. Further, an HA's ongoing compliance with these requirements, and with any HUD accounting procedures and other management requirements necessary to adequately track and monitor the HA's use of Federal funds, will be a condition of continued participation in the demonstration.

VI. Application Submission

A. General

Given the wide scope of MTW, HUD recognizes that it may not be possible for HAs to resolve all outstanding issues in their proposed plans by the application deadline. To the extent there are any such issues, an HA should specifically identify them and describe the process and schedule for resolving them.

B. Submission Requirements

Applications submitted in response to this notice must include each of the following items (except for item (6), which is discretionary):

(1) For PHAs only, the PHA's PHMAP score for the last three years.

(2) A request from the HA for authority to use funds from public and Indian housing operating, modernization, and Section 8 assistance (and to combine funds, to the extent necessary to implement the MTW plan).

(3) Evidence that the HA has provided for community and HA resident participation in developing its MTW proposal, including a public hearing.

(4) An MTW plan that fully describes the proposed demonstration and states and quantifies the HA's goals and objectives for the demonstration, addresses the evaluation criteria described in Section VII of this notice, and describes, among other things, the following: (a) whether and to what extent the HA proposes to combine funds from different types of HUD assistance, the particular program purposes for which all such funds were originally committed to the HA (and any specific restrictions on the use of such funds), and the purposes for which any combined funds will be used; (b) the sources and nature of any other private or public funds or other resources that the HA will use to implement the plan, and the specific purposes for which those funds or resources will be used; (c) the number and general characteristics of public or Indian housing units, or other housing units, involved in the plan; (d) demographic information, including income levels, of families currently assisted by the HA (both in the public housing program and in the Section 8 certificate and voucher programs), and of families to be assisted by the HA under the proposed MTW plan; (e) whether and how assistance will be targeted to families of different income levels by program and/or by site; (f) the HA's proposed rent and occupancy policies; (g) incentives proposed by the HA to encourage self-sufficiency and support and reward work; (h) any proposed homeownership activities; (i) the anticipated impact of state and local welfare reform and related initiatives on design and implementation of the HA's proposed demonstration program; (j) the potential impact of the HA's proposed plan on

current participants in the Section 8 certificate and voucher programs and on current public housing residents; (k) the anticipated impact of the plan on HA revenues and expenses; (l) any significant linkage between the plan and other state, local, or federal housing, self-sufficiency, supportive service, or community or economic development initiatives (such as the Federal Empowerment Zone/Enterprise Communities program); (m) any unresolved issues with respect to the plan, and the process and schedule for resolving them; and (n) how the HA has taken into account comments from the public hearing, other public comments, and comments from current and prospective public and Indian housing residents and recipients of Section 8 assistance who would be affected by the plan.

(5) Assurance that the HA will:

(a) Provide that at least 75% of the families initially assisted under MTW by the HA will be very low-income families (i.e., families with incomes of less than 50% of area median income);

(b) Establish a reasonable rent policy that is designed to encourage employment and self-sufficiency on the part of participating families, such as by excluding all or a portion of a family's earned (or newly earned) income for purposes of determining rent;

(c) Continue to assist substantially the same total number of low-income families under the demonstration as would have been served if HUD funding sources had not been combined;

(d) Maintain under the demonstration a comparable mix of families, by family size, as would have been assisted if HUD funding sources had not been combined;

(e) Ensure that housing assisted under MTW meets housing quality standards established or approved by HUD;

(f) Comply with the reporting requirements discussed in Section V of this notice;

(g) Comply with Fair Housing and Equal Opportunity Requirements as listed in 24 CFR Part 5, the Indian Civil Rights Act, pursuant to 24 CFR 950.115(b), and the Americans with Disabilities Act of 1990; and

(h) Provide HUD with any documentation that HUD needs to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities and otherwise will assist HUD in complying with 24 CFR Part 50 environmental review procedures. The HA agrees (i) to carry out any mitigating measures required by HUD or select an alternate eligible property, if permitted by HUD, and (ii) not to acquire, rehabilitate, convert, lease, repair, or construct property, or commit HUD or local funds to such program activities with respect to any eligible property until HUD approval under 24 CFR Part 50 is received.

(6) At the HA's option, a request for training and technical assistance to assist the HA with further design and evaluation of its demonstration program following selection.

(7) If the application is from a consortium of HAs, a statement of the goals and objectives of the consortium and of the nature of the relationship among the HAs (including a description of any other current or prior collaborations and of the proposed allocation of responsibilities between the HAs), and an explanation of why the consortium's participation in MTW would be more advantageous than that of a single HA.

(8) A description of any significant partnerships between the HA and other public agencies or private nonprofit or for-profit entities (particularly local welfare offices and local providers of job training and related services) that will help to achieve the objectives of the HA's demonstration.

(9) A summary of the relevant experience and skills of the personnel who would have primary responsibility for implementing the HA's demonstration.

(10) A general description of how the HA's proposed plan differs from the requirements of the 1937 Act and the regulations under it.

(11) A proposed schedule showing significant dates and milestones for implementation of the HA's MTW plan. (While the 1996 Appropriations Act does not explicitly address the term of the MTW demonstration, it does require that HUD submit an evaluation report to Congress within six months after the third year of the demonstration. Therefore, for purposes of this notice, HAs should assume a three-year term for their MTW plans.)

C. Corrections to Deficient Applications

Following the submission deadline, if HUD determines that an HA has failed to meet any of the submission requirements stated above, or that the application contains a technical mistake, or omits any other necessary information, then HUD may notify the HA in writing that the HA has 14 calendar days to submit or correct any of the specified items.

VII. Selection of MTW Participants

A. Application Evaluation Criteria

The 1996 Appropriations Act directs HUD to evaluate MTW applications on the basis of an HA's relative public and Indian housing management performance; an HA's potential to plan and carry out a program under the demonstration; and other factors to be determined by HUD. Accordingly, HUD will evaluate applications based on the criteria described below. If the application is from a consortium of HAs, then HUD will apply the evaluation criteria to the entire application and to each HA, as appropriate.

1. HA Management Performance.

a. PHAs. A PHA's public housing management performance will be determined on the basis of its score under the Public Housing Management Assessment Program (''PHMAP''), as provided by the 1996 Appropriations Act. If a PHA does not have a current PHMAP score of at least ''80'' then its application will not be considered further. If a PHA has a current PHMAP score of at least ''80'', then HUD will award points based on the PHA's average PHMAP score over the last three years. A PHA will receive one point for each point by which its average PHMAP score exceeds a score of ''80''. [Up to 20 points.]

b. IHAs. The PHMAP system does not apply to IHAs. Therefore, to determine an IHA's score for this factor, HUD will use other objective criteria that assess IHA management capability based on the relative performance of IHAs in meeting the requirements of 24 CFR Part 950. [Up to 20 points.]

2. Capability

An HA's demonstrated capability to effectively plan, implement, and administer the MTW program it has proposed, as shown by the following: (a) relevant administrative capabilities not captured by PHMAP, such as performance in the Section 8 certificate and voucher programs (as measured by leasing rates and other performance criteria), or significant involvement in other affordable housing or community development activities; (b) the relevant experience and skills of the personnel of the HA, or its partners, who would have primary responsibility for the demonstration; and (c) specific examples of other HA experiences, activities, or accomplishments that demonstrate the HA's capability. [Up to 10 points]

3. Quality and Feasibility of MTW Plan

The quality and feasibility of the HA's MTW plan, including the extent to which the plan: (a) is likely to accomplish any or all of the statutory purposes of MTW, which are to reduce

cost and achieve greater cost effectiveness in Federal expenditures, to provide low-income families with incentives to work and achieve economic self-sufficiency, and to increase housing choices for low-income families; (b) is coherent, comprehensive, and integrated; (c) clearly specifies the objectives of the plan; (d) presents a feasible, cost-effective strategy that is likely to meet those objectives; and (e) demonstrates how the authority provided by MTW to diverge from existing requirements of the public and Indian housing and Section 8 programs would enable the HA to achieve the objectives of its plan. [Up to 40 points]

4. Self-Sufficiency

The extent to which the HA's plan is likely to promote resident self-sufficiency, support and reward work, increase actual employment levels among residents, and reduce the economic and social isolation of very low-income families, based on (a) the HA's experience and track record in encouraging and increasing resident self-sufficiency and employment, and (b) the self-sufficiency strategy in the HA's MTW plan, including, as required to implement the plan, evidence of partnerships with employers and local employment and training agencies that leverage tangible commitments of jobs, employment and training resources, and complementary services, such as child care and transportation. [Up to 20 points]

5. Resident and Community Support and Involvement

The degree to which public and Indian housing residents and the wider local community have been involved in developing the HA's application, including support and involvement: (a) by resident organizations, resident councils, or resident management corporations, and (b) by other local nonprofit, for-profit, and public entities (in addition to any involvement described in response to criterion 4, above) as shown by relevant documentation that demonstrates the nature and depth of such support and involvement. [Up to 10 points]

6. Local and National Impact

The potential local and national impact of the MTW plan if it were to be implemented, considering the degree of innovation proposed, the scale of the plan, and the extent to which implementation of the plan is likely to contribute significantly to HUD's efforts to identify replicable program models promoting the purposes of the demonstration. [Up to 10 points]

B. Selection Process

HUD will evaluate, score, and rank all complete applications using the point values assigned to the evaluation criteria set forth above. In making selections, HUD reserves the right to select a lower-rated approvable application over a higher-rated application if doing so is in the best interests of the demonstration because it will promote diversity among MTW participants and plans in terms of size, geography, program design, or other appropriate factors, or because it will enhance the impact of the demonstration. HUD also reserves the right to limit the size or scope of an HA's proposed program if that is in the best interests of the demonstration and the public and Indian housing and Section 8 programs.

Further, in the interests of achieving the demonstration's goals, HUD may choose to identify as finalists those HAs whose applications are ranked above a certain base score. In that case, HUD would give those HAs the opportunity to further develop, revise, and resubmit their MTW plans. To assist in this process, HUD may provide a brief critique of each plan, identifying its strengths and weaknesses and any area where improvement, clarification, or additional information is needed. Application scores and rankings may be adjusted based on the resubmitted MTW plan. HUD would then make selections for MTW based on the adjusted scores and rankings.

HUD may make a selection subject to the HA's willingness to make certain revisions to the HA's MTW plan.

VIII. MTW Agreement

HUD's selection of an HA for MTW, and the HA's authority to implement an MTW demonstration program, shall be contingent on the execution of an agreement, in a form HUD determines to be appropriate, between the HA and HUD requiring the HA to comply with the MTW plan, as approved by HUD, and setting forth the other terms and conditions applicable to the HA's receipt and use of HUD assistance under the demonstration. The agreement shall identify the sources and uses of all HUD assistance which the HA will use during the demonstration, specifying the operating subsidy, modernization assistance, and Section 8 assistance, if any, that the HA may combine into a single fund. If appropriate, the agreement may also provide for further development, clarification, and revision of the HA's MTW plan in order to maximize achievement of the demonstration's goals.

IX. Time Frames

Applications must be received by 4:00 p.m., Eastern Time, on March 18, 1997, by: Director of Special Actions; Office of Policy, Program, and Legislative Initiatives; Department of Housing and Urban Development; 451 Seventh St., SW; Room 4116; Washington, DC 20410.

HAs must submit five copies of their applications. The submission deadline is firm as to date and time. Submissions will not be accepted by facsimile.

X. Other Matters

A. Environmental Review

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC. Physical activities conducted at public housing properties under MTW will continue to be subject to environmental laws now applicable to public housing. To the extent necessary during implementation of MTW, HUD will carry out environmental review procedures under the provisions of 24 CFR Part 50 before HUD approves physical activities at specific properties.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice merely announces the opportunity for participation in a demonstration program and the requirements applicable to HAs that elect to participate.

C. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on

family formation, maintenance, and general well-being. No significant change in existing HUD policies or programs would result from promulgation of this notice. To the extent that this notice will affect families, the impact would be favorable, and, thus, the notice is not subject to further review under the Order.

Dated: December 2, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–32104 Filed 12–17–96; 8:45 am]

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Federal Register

Wednesday
December 18, 1996

Part VI

The President

Proclamation 6965—Wright Brothers Day, 1996

Federal Register
Vol. 61, No. 244
Wednesday, December 18, 1996

Presidential Documents

Title 3—

The President

Proclamation 6965 of December 13, 1996

Wright Brothers Day, 1996

By the President of the United States of America

A Proclamation

Ninety-three years ago, on a windswept North Carolina beach, air travel by hot air balloon and gliders gave way to American ingenuity and the era of powered flight. Wilbur and Orville Wright—employing innovations like the wind tunnel and single component testing—designed, built, and ultimately flew the first powered, heavier-than-air craft on the dunes of Kitty Hawk. Years later, Wilbur was to say of this historic event, ''It is the complexity of the flying problem that makes it so difficult. It is not . . . solved by stumbling upon a secret, but by the patient accumulation of information upon a hundred different points.'' No longer would the ability to travel by air be bounded by the simple physics of wind and weather, but by the power of the human imagination.

As we have expanded the scope of our dreams, our love of flight has extended our command of the sky. Today, air travel is not only the fastest means of transportation, but the safest as well, and the United States air transportation system, which continues to improve every year, serves as the model to which all others are compared.

My Administration continues to work to make the skies ever safer. Integral to this effort has been the dedicated service of thousands of men and women throughout the air transportation community who strive daily to protect air travelers. Indeed, this month, the Vice President and I were pleased to announce that the major airlines have agreed to install fire detection systems in the cargo holds of some 3,700 airliners that carry the vast majority of Americans flying each year. We cannot make the world risk free, but we can reduce the risks we face. Working together, we have taken another important step to ensure the safety of the flying public.

This year marks the 50th anniversary of Federal aid for our Nation's airports. Working in partnership with State and local governments, private airport operators, and the air carrier and general aviation communities, the Federal Aviation Administration (FAA) has assisted numerous airports with critical safety, security, and capacity projects that directly benefit the American traveling public. It is particularly fitting, as Americans celebrate an important milestone in the history of air transportation, that this year also marks the beginning of important reforms for the FAA that recognize its vital role in advancing sound aviation management and development in the United States and around the world.

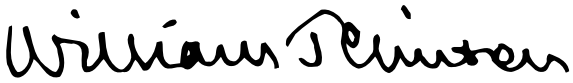
On April 1, 1996, the FAA began transforming itself from the model previously mandated by law into a more effective, streamlined system, better designed for the challenges of the twenty-first century. In the recently enacted Federal Aviation Reauthorization Act of 1996, the Congress, working with my Administration, complemented those important reforms with a new financial model for the agency to help it meet the safety and capacity challenges it faces. This legislation also provided the FAA with improved tools to perform its mission more effectively. It builds on security recommendations of the Vice President's Commission on Aviation Safety and Security that will improve the FAA's ability to more comprehensively address the threat posed by terrorists to civil air transportation. With these statutory improve-

ments, the world of aviation will be an exciting one in which future aviation pioneers may fulfill their dreams and aspirations.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 17, 1996, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of December, 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.



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