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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 62, No. 183
Monday, September 22, 1997

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1639

Claims Collection

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) is issuing interim regulations to govern the collection of debts owed to the Board and to other Federal agencies. The regulations of this part are issued under section 3 of the Federal Claims Collection Act of 1966, Public Law 89–508, 80 Stat. 308; the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749; the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321; 31 U.S.C. 3720A; and in conformity with the Federal guidelines for agency debt collection issued by the Department of Justice and the General Accounting Office (4 CFR chapter II) and the guidelines of the Office of Personnel Management (5 CFR part 550, subpart K) on offsets against Federal employee salaries.

DATES: These regulations are effective on September 22, 1997. Written comments must be received on or before October 1, 1997.

ADDRESSES: Send comments to: John J. O'Meara, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005; telefax number (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, telephone number (202) 942–1660.

SUPPLEMENTARY INFORMATION: These regulations describe a number of actions which the Board may take to collect debts owed to the Board. These actions are offsets against monies owed to the debtor by the Board or Federal agencies, offsets against tax refunds owed to the debtor by the Internal Revenue Service, referral to a private collection contractor, and referral to the Department of Justice for the initiation of an action in a judicial proceeding against the debtor. These regulations also provide that the Board will enter into a cross-servicing agreement with the Department of the Treasury (Treasury) which is authorized under the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, to take all of the above-listed actions to collect the debt for the Board. In addition, the Board may take action on behalf of a Federal agency to offset the debt owed to a creditor agency against the salary of a Board employee or against amounts the Board owes that are not included in net assets available for Thrift Savings Plan benefits. The Board anticipates that some of these procedures may change when revised Federal Claims Collection Standards are issued by the Department of Justice and Treasury later this year.

The Board does not receive an annual appropriation of funds from Congress. Instead, all funds under the control of the Board come from the Thrift Savings Fund, which it administers. For this reason, all debts that are collected under these regulations on behalf of the Board will be deposited in the Thrift Savings Fund rather than the General Fund of the Treasury.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The Board wishes to have these procedures in effect at the earliest possible date in order to initiate debt collection action against persons who owe money to the Board.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Public Law 104–4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), the Board 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 United States before publication of this rule in today's **Federal Register**. This interim rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1639

Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

Title 5 of the Code of Federal Regulations is amended by adding a new Part 1639 to Chapter VI to read as follows:

PART 1639—CLAIMS COLLECTION

Subpart A—Administrative Collection, Compromise, Termination, and Referral of Claims

Sec.

Subpart B—Salary Offset

Subpart C—Tax Refund Offset

Subpart D—Administrative Offset

Authority: 5 U.S.C. 8474; 31 U.S.C. 3711, 3716, 3720A.

Subpart A—Administrative Collection, Compromise, Termination, and Referral of Claims

§ 1639.1 Authority.

The regulations of this part are issued under 5 U.S.C. 8474 and 31 U.S.C. 3711, 3716, and 3720A, and in conformity with the Federal Claims Collection Standards, 4 CFR chapter II, prescribing standards for administrative collection, compromise, termination of agency collection action, and referral to the Department of Justice for litigation of civil claims by the Government for money or property, 4 CFR chapter II.

§ 1639.2 Application of other regulations; scope.

All provisions of the Federal Claims Collection Standards, 4 CFR chapter II, apply to the regulations of this part. This part supplements 4 CFR chapter II by the prescription of procedures and directives necessary and appropriate for operations of the Federal Retirement Thrift Investment Board. The Federal Claims Collection Standards and this part do not apply to any claim as to which there is an indication of fraud or misrepresentation, as described in 4 CFR 101.3, unless returned by the Department of Justice to the Board for handling.

§ 1639.3 Application to other statutes.

(a) The Executive Director may exercise his or her compromise authority for those debts not exceeding $100,000, excluding interest, in conformity with the Federal Claims Collection Act of 1966, the Federal Claims Collection Standards issued thereunder, and this part, except where standards are established by other statutes or authorized regulations issued pursuant to them.

(b) The authority of the Executive Director of the Board to remit or mitigate a fine, penalty, or forfeiture will be exercised in accordance with the standards for remission or mitigation established in the governing statute. In the absence of such standards, the Federal Claims Collection Standards will be followed to the extent applicable.

§ 1639.4 Definitions.

As used in this part:

Administrative offset, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable to the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt owed to the United States.

Agency means executive departments and agencies, the United States Postal Service, the Postal Rate Commission, the United States Senate, the United States House of Representatives, and any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, and Government corporations.

Board means the Federal Retirement Thrift Investment Board, which administers the Thrift Savings Plan and the Thrift Savings Fund.

Certification means a written debt claim form received from a creditor agency which requests the paying agency to offset the salary of an employee.

Creditor agency means an agency of the Federal Government to which the debt is owed.

Debt means money owed by an individual to the United States including a debt owed to the Thrift Savings Fund or to a Federal agency, but does not include a Thrift Savings Plan loan.

Delinquent debt means a debt that has not been paid within the time limit prescribed by the Board.

Disposable pay means that part of current basic pay, special pay, incentive pay, retirement pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld, excluding any garnishment under 5 CFR parts 581, 582. The Board will include the following deductions in determining disposable pay subject to salary offset:

(1) Federal Social Security and Medicare taxes;

(2) Federal, state, or local income taxes, but no more than would be the case if the employee claimed all dependents to which he or she is entitled and any additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(3) Health insurance premiums;

(4) Normal retirement contributions as explained in 5 CFR 581.105(e);

(5) Normal life insurance premiums, excluding optional life insurance premiums; and

(6) Levies pursuant to the Internal Revenue Code, as defined in 5 U.S.C. 5514(d).

Employee means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board, or his or her designee.

Federal Claims Collection Standards means the standards published at 4 CFR chapter II.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of the hearing.

Net Assets Available for Thrift Savings Plan Benefits means all funds owed to Thrift Savings Plan participants and beneficiaries.

Notice of intent to offset or *notice of intent* means a written notice from a creditor agency to an employee which alleges that the employee owes a debt to the creditor agency and which apprises the employee of certain administrative rights.

Notice of salary offset means a written notice from the paying agency to an employee informing the employee that it has received a certification from a creditor agency and intends to begin salary offset.

Participant means any person with an account in the Thrift Savings Plan, or who would have an account but for an employing agency error.

Paying agency means the agency of the Federal Government which employs the individual who owes a debt to the United States. In some cases, the Federal Retirement Thrift Investment Board may be both the creditor agency and the paying agency.

Payroll office means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee.

Person includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, State and local governments, or other entity that is capable of owing a debt to the United States Government; however, agencies of the United States, are excluded.

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

Salary offset means an offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Tax refund offset means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to the Board or a Federal agency.

Thrift Savings Fund means the Fund described in 5 U.S.C. 8437.

Thrift Savings Plan means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431 *et seq.*.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by a person to the Board or a Federal agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 1639.5 Use of credit reporting agencies.

(a) The Board may report delinquent debts to appropriate credit reporting agencies by providing the following information:

(1) A statement that the debt is valid and is overdue;

(2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;

(3) The amount, status, and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, the Board will:

(1) Take reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, notify the debtor by certified mail, return receipt requested:

(i) That a designated Board official has reviewed the claim and has determined that the claim is valid and over-due;

(ii) That within 60 days the Board intends to disclose to a credit reporting agency the information authorized for disclosure by this section; and

(iii) That the debtor can request an explanation of the claim, can dispute the information in the Board's records concerning the claim, and can file for an administrative review, waiver, or reconsideration of the claim, where applicable.

(c) At the time debt information is submitted to a credit reporting agency, the Board will provide a written statement to the reporting agency that all required actions have been taken. In addition, the Board will, thereafter, ensure that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verify or correct information relevant to the claim.

(d) If a debtor disputes the validity of the debt, the credit reporting agency will refer the matter to the appropriate Board official. The credit reporting agency will exclude the debt from its reports until the Board certifies in writing that the debt is valid.

§ 1639.6 Contracting for collection services.

The Board will use the services of a private collection contractor where it determines that such use is in the best interest of the Board. When the Board determines that there is a need to contract for collection services, it will—

(a) Retain sole authority to:

(1) Resolve any dispute by the debtor regarding the validity of the debt;

(2) Compromise the debt;

(3) Suspend or terminate collection action;

(4) Refer the debt to the Department of Justice for litigation; and

(5) Take any other action under this part which does not result in full collection of the debt;

(b) Require the contractor to comply with the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), with applicable Federal and State laws pertaining to debt collection practices (e.g., the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*)), and with applicable regulations of the Board;

(c) Require the contractor to account accurately and fully for all amounts collected; and

(d) Require the contractor to provide to the Board, upon request, all data and reports contained in its files relating to its collection actions on a debt.

§ 1639.7 Initial notice to debtor.

(a) When the Executive Director determines that a debt is owed the Board, he will send a written notice to the debtor. The notice will inform the debtor of the following:

(1) The amount, nature, and basis of the debt;

(2) That payment is due immediately after receipt of the notice;

(3) That the debt is considered delinquent if it is not paid within 30 days of the date the notice is mailed or hand-delivered;

(4) That interest charges (except for State and local governments and Indian tribes), penalty charges, and admini strative costs may be assessed against a delinquent debt;

(5) Any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt); and

(6) The address, telephone number, and name of the Board official available to discuss the debt.

(b) The Board will respond promptly to communications from the debtor.

(c) Subsequent demand letters also will notify the debtor of any interest, penalty, or administrative costs which have been assessed and will advise the debtor that the debt may be referred to a credit reporting agency (see § 1639.5), a collection agency (see § 1639.6), the Department of Justice (see § 1639.10), or the Department of the Treasury (see § 1639.11), if it is not paid.

§ 1639.8 Interest, penalty, and administrative costs.

(a) *Interest.* The Board will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(1) Interest begins to accrue on all debts from the date the initial notice is mailed or hand-delivered to the debtor. The Board will not recover interest if the debt is paid within 30 days of the date of the initial notice. The Board will assess an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Fiscal Requirements Manual Bulletins, unless a different rate is necessary to protect the interests of the Board. The Board will notify the debtor of the basis for its finding when a different rate is necessary to protect the Board's interests.

(2) The Executive Director may extend the 30-day period for payment where he determines that such action is in the best interest of the Board. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* The Board will assess a penalty charge, not to exceed six percent a year, on any portion of a debt that is not paid within 90 days of the initial notice.

(c) *Administrative costs.* The Board will assess charges to cover administrative costs incurred as the result of the debtor's failure to pay a debt within 30 days of the date of the initial notice. Administrative costs include the additional costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report, or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Board.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest, and then to the outstanding debt principal.

(e) *Waiver.* (1) The Executive Director may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty, or administrative costs, if he determines that collection of these charges would be against equity and good conscience or not in the best interest of the Board.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, where these charges have been collected before the waiver decision, they will not be refunded. The Executive Director's decision to waive or not waive collection of these charges is final and is not subject to further review.

§ 1639.9 Charges pending waiver or review.

Interest, penalty charges, and administrative costs will continue to accrue on a debt during administrative appeal, either formal or informal, and during waiver consideration by the Board, unless specifically prohibited by a statute or a regulation.

§ 1639.10 Referrals to the Department of Justice.

The Executive Director will refer to the Department of Justice for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended, or terminated. Referrals will be made as early as possible, consistent with aggressive Board collection action, and within the period for bringing a timely suit against the debtor.

§ 1639.11 Cross-servicing agreement with the Department of the Treasury.

The Board will enter into a cross-servicing agreement with the Department of the Treasury which will authorize Treasury to take all of the debt collection actions described in this part. These debt collection services will be provided to the Board in accordance with 31 U.S.C. 3701 *et seq.*

§ 1639.12 Deposit of funds collected.

All funds owed to the Board and collected under this part will be deposited in the Thrift Savings Fund. Funds owed to other agencies and collected under this part will be credited to the account designated by the creditor agency for the receipt of the funds.

§ 1639.13 Antialienation of funds in Thrift Savings Plan participant accounts.

In accordance with 5 U.S.C. 8437, net assets available for Thrift Savings Plan benefits will not be used to satisfy a debt owed by a participant to an agency under the regulations of this part or under the debt collection regulations of any agency.

Subpart B—Salary Offset

§ 1639.20 Applicability and scope.

(a) The regulations in this subpart provide Board procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to the Board or to Federal agencies.

(b) The regulations in this subpart apply to collections by the Executive Director, from:

(1) Federal employees who owe debts to the Board; and

(2) Employees of the Board who owe debts to Federal agencies.

(c) The regulations in this subpart do not apply to debts arising under the Internal Revenue Code of 1986, as amended (title 26, United States Code); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR Parts 101–105, 38 CFR 1.900—1.994).

(e) A levy pursuant to the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

(f) This subpart does not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 1639.21 Waiver requests.

The regulations in this subpart do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or under other statutory provisions pertaining to the particular debts being collected.

§ 1639.22 Notice requirements before offset.

Deductions under the authority of 5 U.S.C. 5514 may be made if, a minimum of 30 calendar days before salary offset is initiated, the Board provides the employee with written notice that he or she owes a debt to the Board. This notice of intent to offset an employee's salary will be hand-delivered or sent by certified mail to the most current address that is available to the Board. The notice provided under this section will state:

(a) That the Board has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Board's intention to collect the debt by deducting money from the employee's current disposable pay account until the debt, and all accumulated interest, penalties, and administrative costs, is paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Board's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards, 4 CFR chapter II;

(e) The employee's right to inspect and copy all records pertaining to the debt claimed or to receive copies of those records if personal inspection is impractical;

(f) The right to a hearing conducted by an administrative law judge or other impartial hearing official (*i.e.*, a hearing official not under the supervision or control of the Executive Director), with respect to the existence and amount of the debt claimed or the repayment schedule (*i.e.*, the percentage of disposable pay to be deducted each pay period), so long as a request is filed by the employee as prescribed in § 1639.23;

(g) If not previously provided, the opportunity (under terms agreeable to the Board) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing and signed by both the employee and the Executive Director;

(h) The name, address, and telephone number of an officer or employee of the Board who may be contacted concerning procedures for requesting a hearing;

(i) The method and time period for requesting a hearing;

(j) That the timely filing of a request for a hearing on or before the 15th calendar day following receipt of the notice of intent will stay the commencement of collection proceedings;

(k) The name and address of the officer or employee of the Board to whom the request for a hearing should be sent;

(l) That the Board will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 days from the date the employee receives the notice of debt, unless the employee files a timely request for a hearing;

(m) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(n) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3733, or any other applicable statutory authority; and

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 102, or any other applicable statutory authority;

(o) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(p) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed will be promptly refunded to the employee; and

(q) That proceedings with respect to the debt are governed by 5 U.S.C. 5514.

§ 1639.23 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the Board office designated in the notice of intent. See § 1639.22(k).

(1) The request for hearing must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that support his or her position.

(2) The request for hearing must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. Timely filing will stay the commencement of collection procedures.

(3) The employee must also specify whether an oral or written hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to timely submit.* (1) If the employee files a request for a hearing after the expiration of the 15th calendar day period provided for in paragraph (a) of this section, the Board will accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or because of a failure to receive notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Board's offset schedule, if the employee:

(i) Fails to file a request for a hearing and the failure is not excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified and the hearing official does not determine that failure to appear was due to circumstances beyond the employee's control.

(c) *Representation at the hearing.* The creditor agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her own expense.

(d) *Review of Board records related to the debt.* (1) In accordance with § 1639.22(e), an employee who intends to inspect or copy Board records related to the debt must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within 15 calendar days after the employee's receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements will be made to send copies of those records to the employee.

(e) *Hearing official.* The Board may request an administrative law judge to conduct the hearing or the Board may obtain a hearing official who is not under the supervision or control of the Executive Director.

(f) *Procedure.* (1) *General.* After the employee requests a hearing, the hearing official will notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice will set forth the date, time, and location of the hearing. If the hearing will be written, the employee will be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record will be closed. This date will give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing will be provided an oral hearing, if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (*e.g.*, when an issue of credibility is involved). The hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing. Witnesses who testify in oral hearings will do so under oath or affirmation. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(3) *Record determination.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart.

(g) *Date of decision.* The hearing official will issue a written decision, based upon documentary evidence and information developed at the hearing, as soon as practical after the hearing, but not later than 60 days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In that case, the 60 day decision period will be extended by the number of days by which the hearing was postponed.

(h) *Content of decision.* The written decision will include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(i) *Failure to appear.* (1) In the absence of good cause shown (*e.g.*, excused illness), an employee who fails to appear at a hearing will be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent.

(2) If the representative of the creditor agency fails to appear, the hearing official will proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented by the representative(s) of the employee and the documentary documentation submitted by both parties.

(3) At the request of both parties, the hearing official will schedule a new hearing date. Both parties will be given reasonable notice of the time and place of this new hearing.

§ 1639.24 Certification.

(a) The Board will provide a certification to the paying agency in all cases in which:

(1) The hearing official determines that a debt exists;

(2) The employee admits the existence and amount of the debt by failing to request a hearing; or

(3) The employee admits the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must include:

(1) A statement that the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Board's right to collect the debt first accrued;

(4) A statement that the Board's regulations have been approved by the Office of Personnel Management under 5 CFR part 550, subpart K;

(5) The amount and date of the collection, if only a one-time offset is required;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date other than the next officially established pay period is required; and

(7) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the dates of notices and hearings provided to the employee, or, if applicable, the employee's signed consent to salary offset or a signed statement acknowledging receipt of required procedures.

§ 1639.25 Voluntary repayment agreements as alternative to salary offset.

(a) In response to a notice of intent to offset against an employee's salary to recover a debt owed to the Board, an employee may propose to the Board that he or she be allowed to repay the debt through direct payments as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset must submit in writing a proposed agreement to repay the debt. The proposal must admit the existence of the debt and set forth a proposed repayment schedule. The employee's proposal must be received by the official designated in the notice of intent within 15 calendar days after the employee received the notice.

(b) In response to a timely proposal by the debtor, the Executive Director will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Executive Director's discretion to accept a repayment agreement instead of proceeding by salary offset.

(c) If the Executive Director decides that the proposed repayment agreement is unacceptable, the employee will have 15 days from the date he or she received notice of the decision to file a petition for a hearing.

(d) If the Executive Director decides that the proposed repayment agreement is acceptable, the alternative arrange ment must be in writing and signed by both the employee and the Executive Director.

§ 1639.26 Special review.

(a) An employee subject to salary offset or a voluntary repayment agreement in connection with a debt owed to the Board may, at any time, request that the Board conduct a special review of the amount of the salary offset or voluntary payment, based on materially changed circumstances, such as catastrophic illness, divorce, death, or disability.

(b) To assist the Board in determining whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee will submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents, indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee must file an alternative proposed salary offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Executive Director will evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The Executive Director will notify the employee in writing of his determination, including, if appropriate, a revised offset or payment schedule.

(e) If the special review results in a revised offset or repayment schedule, the Board will provide a new certification to the paying agency.

§ 1639.27 Procedures for salary offset.

(a) The Board will coordinate salary deductions under this subpart.

(b) The Board's payroll office will determine the amount of an employee's disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by the Board's payroll office of certification for the creditor agency.

(d) Types of collection—

(1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made

unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Deductions from final check.* A deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the Federal Claims Collection Standards, 4 CFR chapter II, in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from the Board, and the balance of the debt cannot be liquidated by offset of the final salary check, the Board may offset any later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the Federal Claims Collection Standards, 4 CFR chapter II.

(e) Multiple debts. In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the Board's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) Precedence of debts owed to the Board. For Board employees, debts owed to the Board generally take precedence over debts owed to other agencies. In the event that a debt to the Board is certified while an employee is subject to a salary offset to repay another agency, the Board may decide whether to have the first debt repaid in full before collecting the claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Board can be collected in one pay period, the Board payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the debt to the Board. When an employee owes two or more debts, the best interests of the Board will be the primary con sideration in the payroll office's determination of the order in which the debts should be collected.

§ 1639.28 Coordinating salary offset with other agencies.

(a) *Responsibility of the Board as the creditor agency.* (1) The Board will coordinate debt collections with other agencies and will, as appropriate:

(i) Arrange for a hearing or special review upon proper petitioning by the debtor; and

(ii) Prescribe, upon consultation with the General Counsel, the additional practices and procedures that may be necessary to carry out the intent of this subpart.

(2) The Board will ensure:

(i) That each notice of intent to offset is consistent with the requirements of § 1639.22;

(ii) That each certification of debt that is sent to a paying agency is consistent with the requirements of § 1639.24; and

(iii) That hearings are properly scheduled.

(3) Requesting recovery from current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Board will provide the paying agency with a certification as provided in § 1639.24.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, the Board must submit a debt claim to the paying agency for collection under 31 U.S.C. 3716. The paying agency must certify the total amount of its collection on the debt and notify the employee and the Board. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal Government sources, the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Board must submit a properly certified claim to the agency responsible for making the payments before the collection can be made.

(5) Separated employee. If the employee is already separated and all payments due from his or her former paying agency have been paid, the Board may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR part 831, subpart R, or 5 CFR part 845, subpart D) or other similar funds, be administratively offset to collect the debt.

(6) Employee transfer. When an employee transfers from one paying agency to another paying agency, the Board will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Board will submit a properly certified claim to the new paying agency and will subsequently review the debt to make sure the collection is resumed by the new paying agency.

(b) *Responsibility of the Board as the paying agency.* (1) *Complete claim.* When the Board receives a certified claim from a creditor agency, deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, the employee will receive a written notice from the Board including:

(i) A statement that the Board has received a certified debt claim from the creditor agency;

(ii) The amount of the debt claim;

(iii) The date salary offset deductions will begin, and

(iv) The amount of such deductions.

(2) *Incomplete claim.* When the Board receives an incomplete certification of debt from a creditor agency, the Board will return the debt claim with a notice that procedures under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Board is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Board, the employee transfers from the Board to a different paying agency before the debt is collected in full, the Board will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor agency will include information on the employee's transfer.

§ 1639.29 Refunds.

(a) If the Board is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The debt is waived or all or part of the funds deducted are otherwise found not to be owed; or

(2) An administrative or judicial order directs the Board to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 1639.30 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law, unless there are statutory or con tractual provisions to the contrary.

Subpart C—Tax Refund Offset

§ 1639.40 Applicability and scope.

(a) The regulations in this subpart implement 31 U.S.C. 3720A which authorizes the Department of the Treasury to reduce a tax refund by the amount of a past-due legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due legally enforceable debt referable to the Department of the Treasury is a debt that is owed to the Board; and:

(1) Is at least $25.00 dollars;

(2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(3) Cannot be currently collected under the salary offset provisions of 5 U.S.C. 5514;

(4) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Board against amounts payable to the debtor by the Board;

(5) With respect to which the Board has given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence presented by the debtor, and has determined that an amount of the debt is past due and legally enforceable;

(6) Which has been disclosed by the Board to a credit reporting agency as authorized by 31 U.S.C. 3711(e), unless the credit reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c;

(7) With respect to which the Board has notified or has made a reasonable attempt to notify the debtor that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days thereafter, the debt will be referred to the Department of the Treasury for offset against any overpayment of tax; and

(8) All other requirements of 31 U.S.C. 3720A and the Department of Treasury regulations relating to the eligibility of a debt for tax return offset have been satisfied.

§ 1639.41 Procedures for tax refund offset.

(a) The Board will be the point of contact with the Department of the Treasury for administrative matters regarding the offset program.

(b) The Board will ensure that the procedures prescribed by the Department of the Treasury are followed in developing information about past-due debts and submitting the debts to the IRS.

(c) The Board will submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Department of the Treasury which will contain:

(1) The name and taxpayer identifying number (as defined in section 6109 of the Internal Revenue Code, 26 U.S.C. 6109) of the person who is responsible for the debt;

(2) The dollar amount of the past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement certifying that, with respect to each debt reported, all of the requirements of eligibility of the debt for referral for the refund offset have been satisfied. See § 1639.40(b).

(d) The Board shall promptly notify the Department of the Treasury to correct Board data submitted when it:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on the debt; or

(3) Receives notice that the person owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(e) When advising debtors of an intent to refer a debt to the Department of the Treasury for offset, the Board will also advise the debtors of all remedial actions available to defer or prevent the offset from taking place.

§ 1639.42 Notice requirements before tax refund offset.

(a) The Board must notify, or make a reasonable attempt to notify, the person:

(1) The amount of the debt and that the debt is past due; and

(2) Unless repaid within 60 days, the debt will be referred to the Department of the Treasury for offset against any refund of overpayment of tax.

(b) The Board will provide a mailing address for forwarding any written correspondence and a contact name and telephone number for any questions concerning the offset.

(c) The Board will give the individual debtor at least 60 days from the date of the notice to present evidence that all or part of the debt is not past due or legally enforceable. The Board will consider the evidence presented by the individual and will make a determination whether any amount of the debt is past due and legally enforceable. For purposes of this section, evidence that collection of the debt is affected by a bankruptcy proceeding involving the individual will bar referral of the debt to the Department of the Treasury.

(d) Notice given to a debtor under paragraphs (a), (b), and (c) of this section shall advise the debtor of how he or she may present evidence to the Board that all or part of the debt is not past due or legally enforceable. Such evidence may not be referred to, or considered by, individuals who are not officials, employees, or agents of the United States in making the determination required under paragraph (c) of this section. Unless such evidence is directly considered by an official or employee of the Board, and the determination required under paragraph (c) of this section has been made by an official or employee of the Board, any unresolved dispute with the debtor regarding whether all or part of the debt is past due or legally enforceable must be referred to the Board for ultimate administrative disposition, and the Board must directly notify the debtor of its determination.

Subpart D—Administrative Offset

§ 1639.50 Applicability and scope.

(a) The regulations in this subpart apply to the collection of debts owed to the Board, or from a request for an offset received by the Board from a Federal agency. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716). The regulations in this subpart are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

(b) The Executive Director, after attempting to collect a debt owed to the Board under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset, subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interest of the Board to collect the debt by administrative offset because of the decreased costs of collection and acceleration in the payment of the debt.

(c) The Executive Director may initiate administrative offset with regard to debts owed by a person to a Federal agency, so long as the funds to be offset are not payable from net assets available for Thrift Savings Plan benefits. The head of the creditor agency, or his or her designee, must submit a written request for the offset with a certification that the debt exists and that the person has been afforded the necessary due process rights.

(d) The Executive Director may request another agency that holds funds payable to a Fund debtor to pay the funds to the Board in settlement of the debt. The Board will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(e) If the six-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such an action are likely to be less than the amount of the debt.

(f) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years unless facts material to the Board or a Federal agency's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting the debt.

(g) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute; or

(2) Debts owed to the Board by Federal agencies or by any State or local government.

§ 1639.51 Notice procedures.

Before collecting any debt through administrative offset, the Board will send a notice of intent to offset to the debtor by certified mail, return receipt requested, at the most current address that is available to the Board. The notice will provide:

(a) A description of the nature and amount of the debt and the intention of the Board to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of the Board with respect to the debt;

(c) An opportunity for review within the Board of the determination of the Board with respect to the debt; and

(d) An opportunity to enter into a written agreement for repaying the amount of the debt.

§ 1639.52 Board review.

(a) A debtor may dispute the existence of the debt, the amount of debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Board official who provided the notice of intent to offset within 30 calendar days of the debtor's receipt of the written notice described in § 1639.51.

(b) If the debtor requests an opportunity to inspect or copy the Board's records concerning the disputed claim, the Board will grant 10 business days for the review. The time period will be measured from the time the request for inspection is granted or from the time the debtor receives a copy of the records.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's account(s) maintained in the Board may be temporarily suspended to the extent of the debt that is owed. Depending on the type of transaction, the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due on the transaction. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized by law will continue to accrue.

(e) If the debtor does not exercise the right to request a review within the time specified in this section or if, as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset will be ordered in accordance with the regulations in this subpart without further notice.

§ 1639.53 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for repaying the debt. If the financial condition of the debtor does not support the ability to pay in one lump sum, the Board may consider reasonable installments. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of the Board's request for the statement. At the Board's option, a confess-judgment note or bond of indemnity with surety may be required for installment agreements. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 31 U.S.C. 3711.

§ 1639.54 Requests for offset to Federal agencies.

The Executive Director may request that funds due and payable to a debtor by another Federal agency be paid to the Board in payment of a debt owed to the Board by that debtor. In requesting administrative offset, the Board, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(a) That the debtor owes the debt;

(b) The amount and basis of the debt; and

(c) That the Board has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

§ 1639.55 Requests for offset from Federal agencies.

Any Federal agency may request that funds due and payable to its debtor by the Board be administratively offset in order to collect a debt owed to that agency by the debtor, so long as the funds are not payable from net assets available for Thrift Savings Plan benefits. The Board will initiate the requested offset only:

(a) Upon receipt of written certification from the creditor agency stating:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt;

(3) That the agency has prescribed regulations for the exercise of administrative offset; and

(4) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review; and

(b) Upon a determination by the Board that collection by offset against funds payable by the Board would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

§ 1639.56 Expedited procedure.

The Board may effect an administrative offset against a payment to be made to the debtor before completion of the procedures required by §§ 1639.51 and 1639.52 if failure to take the offset would substantially jeopardize the Board's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be promptly followed by the completion of those procedures. Amounts recovered by offset, but later found not to be owed to the Board, will be promptly refunded.

[FR Doc. 97–24741 Filed 9–19–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–60–AD; Amendment 39–10131; AD 97–15–13 R1]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises Airworthiness Directive (AD) 97–15–13, which currently requires installing lubrication fittings in the airstair door handle and latch housing mechanisms on certain Raytheon Aircraft Company (Raytheon) Models 1900, 1900C, and 1900D airplanes (formerly referred to as Beech Models 1900, 1900C, and 1900D airplanes). Certain Model 1900C serial number airplanes were incorrectly referenced as Model 1900D airplanes in the Applicability section of AD 97–15–13. This AD maintains the requirements of AD 97–15–13, and corrects the model and serial number reference as described above. The actions specified by this AD are intended to prevent moisture from accumulating and freezing in the airstair door handle and latch housing, which could result in the door freezing shut and passengers not being able to evacuate the airplane in an emergency situation.

DATES: Effective September 22, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of September 5, 1997 (62 FR 39927, July 25, 1997).

Comments for inclusion in the Rules Docket must be received on or before October 20, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4124; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

AD 97–15–13, Amendment 39–10087 (62 FR 39927, July 25, 1997), currently requires installing lubrication fittings in the airstair door handle and latch housing mechanisms on Raytheon Models 1900, 1900C, and 1900D airplanes. Accomplishment of the actions specified in this AD are in accordance with Raytheon Mandatory Service Bulletin No. 2572, dated July, 1996.

The FAA has since realized that it inadvertently referenced the Model 1900C (C–12J) airplanes, serial numbers UD–1 through UD–6, as Model 1900D (C–12J) airplanes.

These Raytheon Model 1900C (C12J) airplanes are all owned by the U.S. military and are not currently on the U.S. Register. The FAA believes that the actions of AD 97–15–13 are already incorporated on these airplanes. With this in mind, there would be no further cost impact upon U.S. operators over that of AD 97–15–13 if these airplanes are transferred from military to civilian service.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken in order to prevent moisture from accumulating and freezing in the airstair door handle and latch housing, which could result in the door freezing shut and passengers not being able to evacuate the airplane in an emergency situation.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models 1900, 1900C, and 1900D airplanes of the same type design, this AD revises AD 97–15–13 to require the same actions, but changes the designation of the Model 1900D (C–12J) airplanes, serial numbers UD–1 through UD–6, to Model 1900C (C–12J) airplanes, serial numbers UD–1 through UD–6.

Determination of the Effective Date of the AD

Since the portion of AD 97–15–13 that is being revised does not affect any airplane that is currently on the U.S. register, there are no adverse economic impacts or additional burdens on any person. Therefore, prior notice and public procedures hereon are unnecessary and the AD may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–60–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 97–15–13, Amendment 39–10087, and by adding a new AD to read as follows:

97–15–13 R1 Raytheon Aircraft Company: Amendment 39–10131; Docket No. 96–CE–60–AD. Revises AD 97–15–13, Amendment 39–10087.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial Nos.
1900	UA–1 through UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J).	UD–1 through UD–6.
1900D	UE–1 through UE–157.

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

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent moisture from accumulating and freezing in the airstair door handle and latch housing, which could result in the door freezing shut and passengers not being able to evacuate the airplane in an emergency situation, accomplish the following:

(a) Install lubrication fittings in the airstair door handle and latch housing mechanisms in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin No. 2572, dated July, 1996.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(d) The installation required by this AD shall be done in accordance with Raytheon Mandatory Service Bulletin No. 2572, dated July, 1996. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of September 5, 1997 (62 FR 39927, July 25, 1997). Copies may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–10131) revises AD 97–15–13, mendment 39–10087.

(f) This amendment (39–10131) becomes effective on September 22, 1997.

Issued in Kansas City, Missouri, on September 8, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25052 Filed 9–19–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–03; Amendment 39–10138; AD 97–19–18]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TSCP700–4B and –5 Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly AiResearch and Garrett) TSCP700–4B and –5 Series Auxiliary Power Units (APUs), that currently requires restretching the first stage low pressure compressor (LPC) tie rods, or replacing affected disks at or before 8,000 cycles since new (CSN). This amendment requires removing from service affected disks, replacing them with serviceable parts, and establishing a life limit of 8,000 CSN for affected disks. This amendment is prompted by a report of a first stage LPC disk rim separation due to low cycle fatigue on an APU that had its tie rods restretched in accordance with the current AD. The actions specified by this AD are intended to prevent first stage LPC disk rim separation due to low cycle fatigue, which could result in an uncontained APU failure and damage to the aircraft.

DATES: Effective October 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 88–24–07, Amendment 39–6062 (53 FR 46439, November 17, 1988), which is applicable to AlliedSignal Inc. (formerly AiResearch and Garrett) TSCP700–4B and –5 series auxiliary power units (APUs), was published in the **Federal Register** on March 18, 1997 (62 FR 12774). That action proposed to eliminate the option of restretching the tie rods, and require removing from service affected disks in accordance with a schedule derived from calculations in AlliedSignal Inc. Service Bulletin (SB) No. TSCP700–49–7266, dated June 16, 1996, replacing affected disks with serviceable parts, and establishing a life limit of 8,000 cycles since new (CSN) for affected disks.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter (the manufacturer) states that the AD should not imply that the tie rod restretch is ineffective, as the manufacturer believes that the tie rod restretch is beneficial in minimizing disk liberation. The FAA concurs that tie rod restretching is beneficial; however, the FAA has determined through analysis that the life limit of affected disks must be reduced to 8,000 CSN regardless of tie rod restretch in order to ensure safe operation.

Three commenters concur with the rule as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 100 APUs installed on aircraft of U.S. registry will be affected by this AD, no additional work hours per APU to accomplish the proposed actions if the actions are accomplished during APU overhaul, 8 work hours to accomplish the required actions if the actions are not accomplished during APU overhaul, and that the average labor rate is $60 per work hour. Based on these figures, and that the work would not be performed during overhaul, the total cost impact of the AD on U.S. operators is estimated to be $48,000.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6062 (53 FR 46439, November 17, 1988) and by adding a new airworthiness directive, Amendment 39–XXXX, to read as follows:

97–XX–XX AlliedSignal Inc.: Amendment 39–XXXX. Docket 97–ANE–03. Supersedes AD 88–24–07, Amendment 39–6062.

Applicability: AlliedSignal Inc. (formerly AiResearch and Garrett) TSCP700–4B and –5 auxiliary power units (APUs), with first stage low pressure compressor (LPC) disks, Part Number (P/N) 3606429–1, installed on but not limited to Airbus A300 series, and McDonnell Douglas DC–10 and KC–10 (military) series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent first stage LPC disk rim separation due to low cycle fatigue, which could result in an uncontained APU failure and damage to the aircraft, accomplish the following:

(a) Remove from service first stage LPC disks, P/N 3606429–1, in accordance with the schedule derived from calculations in paragraph C.(3) of AlliedSignal Service Bulletin (SB) No. TSCP700–49–7266, dated June 16, 1996, and the removal procedures described in the Accomplishment Instructions of that SB, and replace with serviceable parts.

(b) Except as provided in paragraph (a), this AD establishes a life limit of 8,000 cycles since new (CSN) for first stage LPC disks, P/N 3606429–1.

(c) The definition of a disk cycle may be found in the applicable AlliedSignal Inc. APU Component Maintenance Manual.

(d) Except as provided in paragraph (e) of this AD, no alternative replacement times may be approved for first stage LPC disks, P/N 3606429–1.

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

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

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

(g) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. SB:

Document No.	Pages	Date
TSCP700–49–7266. Total pages: 6.	1–6	June 16, 1996.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on October 27, 1997.

Issued in Burlington, Massachusetts, on September 12, 1997.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–24910 Filed 9–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–36–AD; Amendment 39–10141; AD 97–20–03]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland Model DHC–7 series airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit positioning of the power levers below the flight idle stop during flight, and to add a statement of the consequences of such positioning of the power levers. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller ground beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop when the airplane is in flight.

EFFECTIVE DATE: October 27, 1997.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7514; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all de Havilland Model DHC–7 series airplanes was published in the **Federal Register** on April 15, 1997 (62 FR 18304). That action proposed revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule, but remarks that, if an inherent design problem exists on the affected airplanes to allow flightcrews to select the power levers below the flight idle stop while in flight, the FAA should consider the addition of a mechanical means to preclude such selection. The FAA acknowledges the commenter's concern, and may consider additional rulemaking to address that concern in the future on certain airplanes. However, until such final action is identified, the FAA considers it appropriate to proceed with issuance of this final rule. No change to the final rule is required.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,700, or $60 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ‘‘significant regulatory action’’ under Executive Order 12866; (2) is not a ‘‘significant rule’’ under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–20–03 de Havilland: Amendment 39–10141. Docket 97–NM–36–AD.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

‘‘Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.’’

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Maintenance Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

(d) This amendment becomes effective on October 27, 1997.

Issued in Renton, Washington, on September 16, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25054 Filed 9–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–07–AD; Amendment 39–10140; AD 97–20–02]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–188A and L–188C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Lockheed Model L–188A and L–188C series airplanes. This amendment requires revising the Airplane Flight Manual (AFM) to prohibit the positioning of the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below flight idle stop. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines where the propeller ground beta was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Effective October 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE-116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta,-Georgia 30349; telephone (770) 703–7367; fax (770) 703–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Lockheed Model L–188A and L–188C series airplanes was published in the **Federal Register** on April 22, 1997 (62 FR 19526). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the positioning of the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below flight idle stop.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule, but remarks that, if an inherent design problem exists on the affected airplanes to allow flightcrews to select the power levers below the flight idle stop while in flight, the FAA should consider the addition of a mechanical means to preclude such selection. The FAA acknowledges the commenter's concern, and may consider additional rulemaking to address that concern in the future on certain airplanes. However, until such final action is identified, the FAA considers it appropriate to proceed with issuance of this final rule. No change to the final rule is required.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 75 Lockheed Model L–188A and L–188C series airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,920, or $60 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–20–02 Lockheed: Amendment 39–10140. Docket 97-NM-07-AD.

Applicability: All Model L–188A and L–188C series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting either a copy of this AD into the AFM or the revision to the Limitations Section of the FAA-approved Electra 188A or 188C AFM, both dated October 17, 1996, as applicable.

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

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

(d) The AFM revision shall be done in accordance with Electra 188A Airplane Flight Manual, dated October 17, 1996; or Electra 188C Airplane Flight Manual, dated October 17, 1996; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia. Copies may be inspected at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 27, 1997.

Issued in Renton, Washington, on September 16, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25055 Filed 9–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–237–AD; Amendment 39–10139; AD 97–20–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires repetitive inspections to detect cracks, corrosion, or damage of the lower spar fitting body and lug, and corrective actions, if necessary. This AD also provides for optional terminating action for the repetitive inspection requirements. This amendment is prompted by reports that fatigue cracking was found in the lower spar fitting lug on the number 3 pylon and in the lower spar fitting body. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could result in failure of the strut and separation of the engine from the airplane.

DATES: Effective October 7, 1997.

The incorporation by reference of Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of October 7, 1997.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of July 28, 1995 (60 FR 33336, June 28, 1995). The incorporation by reference of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 21, 1995 (60 FR 27008, May 22, 1995).

Comments for inclusion in the rules docket must be received on or before November 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On September 21, 1995, the FAA issued AD 95–20–05, amendment 39–9383 (60 FR 51704, October 3, 1995), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections for cracking in the inboard strut-to-diagonal brace attach fittings, and repair or replacement, if necessary. That AD also provides for an optional terminating modification for the required inspections. The requirements of that AD are intended to prevent failure of the strut and separation of an engine from the airplane due to cracking of the inboard strut-to-diagonal brace attach fittings.

Since issuance of that AD, the FAA has received reports of fatigue cracking in the lower spar fitting lug on the number 3 pylon and in the lower spar fitting body on Boeing Model 747 series airplanes. This cracking area is beyond the inspection area specified in AD 95–20–05.

The airplane on which the lower spar fitting lug was cracked had accumulated 12,734 total flight cycles with 64,537 total flight hours. The lower spar fitting with the cracked lug had accumulated 1,078 flight cycles from the previous inspection required by AD 95–20–05. The lower spar fitting with the cracked body had accumulated less than 1,000 flight cycles from the previous inspection required by AD 95–20–05.

Fatigue cracking in the lower spar fitting lug or the lower spar fitting body, if not detected and corrected in a timely manner, could result in failure of the strut and separation of the engine from the airplane.

Explanation of Relevant Service Information

Subsequent to the finding of this new cracking, the manufacturer issued, and the FAA reviewed and approved Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997. The service bulletin describes procedures for repetitive detailed visual and ultrasonic inspections to detect cracks, corrosion, or damage of the lower spar fitting body and lug, as applicable, and replacement, if necessary. The service bulletin also describes procedures for replacement of the lower spar fitting with a new steel lower spar fitting, which eliminates the need for the repetitive inspections.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of the same type design, this AD is being issued to detect and correct fatigue cracking in the lower spar fitting lug or the lower spar fitting body, which could result in failure of the strut and separation of the engine from the airplane. This AD requires repetitive detailed visual and ultrasonic inspections to detect cracks, corrosion, or damage of the lower spar fitting body and lug, as applicable, and replacement, if necessary. This AD also provides for an optional replacement of the lower spar fitting with a new steel lower spar fitting, which constitutes terminating action for the repetitive inspection requirements. The actions are required to be accomplished in accordance with the service bulletin described previously. In lieu of accomplishing the subject replacement or repetitive inspections, this AD provides for an optional terminating modification of the nacelle strut and wing structure. (This modification is part of the ''Boeing Model 747 Strut and Wing Structural Modification Program,'' described in Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, and Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994.)

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the rules docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97-NM–237-AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the rules docket. A copy of it, if filed, may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–20–01 Boeing: Amendment 39–10139. Docket 97–NM–237–AD.

Applicability: Model 747 series airplanes, having line numbers 1 through 500 inclusive, equipped with Pratt & Whitney Model JT9D–3, –7, or –7Q engines, or having line numbers 202, 204, 232, or 257, equipped with General Electric Model CF6 series engines; certificated in any category; and on which the strut/wing modification has not been accomplished in accordance with either of the following Boeing service bulletins:

- Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, or
- Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the lower spar fitting lug or the lower spar fitting body, which could result in failure of the strut and separation of the engine from the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a detailed visual inspection and an ultrasonic inspection to detect cracks, corrosion, or damage of the lower spar fitting body and lug, as applicable, in accordance with Figures 9 and 10 of Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997.

Note 2: This AD does not require an inspection of the inboard strut-to-diagonal brace attach fitting as described in Figure 1 of Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997. However, this inspection is required to be accomplished as part of AD 95–20–05, amendment 39–9383 (60 FR 51705, October 10, 1995).

(1) If no crack, corrosion, or damage is detected, repeat the detailed visual and ultrasonic inspections thereafter at intervals not to exceed 400 landings.

(2) If any crack, corrosion, or damage is detected, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the lower spar fitting with a new steel lower spar fitting, in accordance with Part II of the Accomplishment Instructions of the service bulletin. Or

(ii) Modify the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, or Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.

(b) Replacement of the lower spar fitting with a new steel lower spar fitting, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997; or modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, or Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994; constitutes terminating action for the repetitive inspection requirements of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(e) The inspections and replacement shall be done in accordance with Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997. The modification, if accomplished, shall be done in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, or Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.

(1) The incorporation by reference of Boeing Service Bulletin 747–54–2062, Revision 8, dated August 21, 1997, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of July 28, 1995 (60 FR 33336, June 28, 1995).

(3) The incorporation by reference of Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of June 21, 1995 (60 FR 27008, May 22, 1995).

(4) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 7, 1997.

Issued in Renton, Washington, on September 15, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25042 Filed 9–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–31–AD; Amendment 39–10142; AD 97–20–04]

RIN 2120–AA64

Airworthiness Directives; Enstrom Helicopter Corporation Model F–28A, F–28C, 280 and 280C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Enstrom Helicopter Corporation (Enstrom) Model F–28A, 280 and certain serial-numbered F–28C and 280C helicopters. This action requires an inspection of the voltage control system and an owner/operator (pilot) cockpit check of the amperage of the electrical system. If certain Prestolite-manufactured components are installed, additional tests and actions are required before further flight and at each pre-flight run-up and annual inspection thereafter. A terminating action is provided by replacing the existing voltage control system with a transistorized system. This amendment is prompted by 14 reports of voltage control system problems, including one incident in which smoke emanated from the radio panel during flight, forcing the pilot to make an emergency landing. The actions specified in this AD are intended to prevent an electrical overload and a failure of the voltage regulator and over-voltage relay, that could result in an inflight fire, and subsequent forced landing of the helicopter.

DATES: Effective October 7, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1997.

Comments for inclusion in the Rules Docket must be received on or before November 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–31–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Enstrom Helicopter Corporation, Twin County Airport, P.O. Box 490, Menominee, Michigan 49858. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda S. Ocker, Aerospace Engineer, FAA, Systems and Flight Test Branch, Chicago Aircraft Certification Office, 2300 East Devon Ave., Des Plaines, Illinois 60018, telephone (847) 294–7126, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to Enstrom Model F–28A, 280 and certain serial-numbered Model F–28C and 280C helicopters. This action requires a determination of whether a Prestolite-manufactured voltage regulator, part number (P/N) VSF7203, or a Prestolite-manufactured over-voltage relay, P/N X16799, X17621, or FOC–4002A is installed, and if installed, within 5 hours time-in-service (TIS), an inspection of the alternator output voltage system for proper operation and an operational test of the over-voltage relay; after the initial inspection, before each flight, a pilot check to determine that the amp meter is reading within the normal range while the engine is operating at 2,200 revolutions-per-minute (RPM); and thereafter, at each annual inspection or 100 hour TIS inspection, whichever occurs first, a test to determine if the alternator output voltage is within normal limits and a test of the over-voltage relay. The checks required by this AD may be performed by the owner/operator holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with the applicable sections of this AD in accordance with sections 43.9 and 91.417(a)(2)(v) (14 CFR 43.9 and 91.417(a)(2)(v)) of the Federal Aviation Regulations. This amendment is prompted by 14 reports of these helicopters having electrical system problems, including one incident in which smoke came from the radio panel during flight, forcing the pilot to make an emergency landing. An investigation conducted by the rotorcraft manufacturer, with FAA participation, revealed that the Prestolite-manufactured voltage regulator, P/N VSF7203, failed, which resulted in a massive voltage increase. A subsequent failure of the over-voltage protection device resulted in overheating of the system wiring and components. The investigation revealed that at least four of the 14 helicopters did not have over-voltage protection installed. This condition, if not corrected, could result in an electrical overload and a failure of the voltage regulator and over-voltage relay, that could result in an inflight fire, and subsequent forced landing of the helicopter.

The FAA has reviewed and approved the technical contents of Enstrom Helicopter Corporation Service Directive Bulletin No. 0086, dated March 31, 1996, which describes procedures for inspecting the voltage control system, testing the components, and replacing the voltage regulator and over-voltage relay as necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other Enstrom Model F–28A, F–28C, 280 and 280C helicopters of the same type design, this AD is being issued to prevent failure of the voltage regulator and over-voltage relay, resulting in an over-voltage and possible fire. This AD requires, within the next five hours time-in-service (TIS), an inspection to determine if the Prestolite-manufactured voltage regulator, part number (P/N) VSF7203, or Prestolite-manufactured over-voltage relays, P/N X16799, X17621, or FOC–4002A, are installed, and an inspection of the alternator output voltage and an operational test of the over-voltage relay. If any of these components are installed, the AD further requires, before each flight, a pilot check of the amp meter for readings within the normal operating range. Thereafter, at each annual inspection or 100 hour TIS inspection (whichever occurs first), a test is required to determine if the alternator output voltage is within tolerance, and if the alternator output voltage is not within the specified range, an adjustment to the voltage regulator, or replacement of the voltage regulator with an airworthy voltage regulator if the voltage regulator cannot be adjusted within the specified range. An operational test of the over-voltage relay is required to determine if the relay operates at the correct voltage, and replacement of any over-voltage relay that fails the operational test with an airworthy over-voltage relay. Any aircraft found without over-voltage relay protection must have an airworthy over-voltage relay installed. A terminating action is provided for in the AD by modifying the wiring and replacing the existing voltage control system with a transistorized voltage controller, P/N ECD–069–11, with built-in over-voltage protection. The actions are required to be accomplished in accordance with the Compliance section of the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–SW–31–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–20–04 Enstrom Helicopter Corporation: Amendment 39–10142. Docket No. 96–SW–31–AD.

Applicability: Model F–28A; 280; F–28C helicopters, with a serial number (S/N) less than S/N 745; and Model 280C helicopters, with a S/N less than S/N 1502, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical overload and a failure of the voltage regulator and over-voltage relay, that could result in an inflight fire, and subsequent forced landing of the helicopter:

(a) Within the next five hours time-in-service (TIS) after the effective date of this AD, determine if a Prestolite-manufactured voltage regulator, part number (P/N) VSF7203, or Prestolite-manufactured over-voltage relay,
P/N X16799, P/N X17621, or P/N FOC–4002A, is installed.

(1) If any of these parts are installed, perform the following:

(i) Determine if the alternator output is within the proper output voltage range (14.2 + .2 to − .4 volts). If the alternator output voltage is not within the proper voltage range, adjust or replace the voltage regulator.

(ii) Conduct an operational test of the over-voltage relay, and replace any over-voltage relay that fails the operational test with an airworthy over-voltage relay. Accomplish both the operational test and the over-voltage relay replacement in accordance with paragraph 6.3.3 of Enstrom Helicopter Corporation SDB No. 0086, dated March 31, 1996.

(2) If no over-voltage relay is installed, before further flight, install an airworthy relay, P/N FOC–4002A, in accordance with paragraph 6.3.4. of Enstrom Helicopter Corporation Service Directive Bulletin (SDB) No. 0086, dated March 31, 1996, or complete the terminating action described in paragraph (c).

(b) After compliance with paragraph (a) of this AD, thereafter, before each flight, check the amp meter for readings within the normal operating range while the helicopter engine is operating at 2,200 revolutions-per-minute (RPM). This check may be performed by the owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this paragraph in accordance with sections 43.9 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 C.F.R. 43.9 and 91.417(a)(2)(v)).

(c) After compliance with paragraph (a) of this AD, thereafter, at each annual inspection or 100 hour time-in-service (TIS) inspection, whichever occurs first, perform the following:

(1) Determine if the alternator output is within the proper output voltage range, and if the alternator output voltage is not within the proper voltage range, adjust or replace the voltage regulator.

(2) Conduct an operational test of the over-voltage relay, and replace any over-voltage relay that fails the operational test with an airworthy over-voltage relay in accordance with paragraph 6.3.3 of Enstrom Helicopter Corporation SDB No. 0086, dated March 31, 1996.

(d) Replacement of the existing voltage control system with a transistorized voltage controller, P/N ECD–069–11, and modifying the wiring in accordance with paragraph 6.4 of Enstrom Helicopter Corporation SDB No. 0086, dated March 31, 1996, is considered a terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago Aircraft Certification Office.

(f) The check, test, and replacement, if necessary, shall be done in accordance with Enstrom Helicopter Corporation Service Directive Bulletin No. 0086, dated March 31, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Enstrom Helicopter Corporation, Twin County Airport, P.O. Box 490, Menominee, Michigan 49858. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 7, 1997.

Issued in Fort Worth, Texas, on September 16, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–25059 Filed 9–19–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 970624153–7228–02]

RIN 0607–AA23

Conditional Exemptions for Filing Shipper's Export Declarations (SED) for Tools of Trade

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is amending the Foreign Trade Statistics Regulations (FTSR) to include an exemption for exporters who currently must file a Shipper's Export Declaration (SED) for temporary exports of tools of trade. This exemption will apply whenever the tools of trade are company-owned commodities and software, accompany the employees or representatives of the exporting company, and are intended to remain outside of the country for less than one year. The current regulation only allowed an exemption for filing an SED when the tools of trade were owned by individuals. This exemption will still apply. The Department of Treasury concurs with the provisions contained in this rule.

EFFECTIVE DATE: This rule will become effective September 22, 1997.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to C. Harvey Monk, Jr., Chief, Foreign Trade Division, Bureau of the Census, Room 2104, Federal Building 3, Washington, D.C. 20233–6700, by telephone on (301) 457–2255 or by fax on (301) 457–2645.

SUPPLEMENTARY INFORMATION: The FTSR currently exempts tools of trade that are owned by individuals from the requirement to file an SED. However, for tools of trade owned by a company rather than an individual, the FTSR provided no such exemption. Companies doing business abroad requested that the Census Bureau review the current regulation to allow an exemption to eliminate the SED filing requirement for company-owned tools of trade that accompany employees or representatives of the company for temporary use abroad.

Based upon our evaluation of these customer requests, the Census Bureau determined to broaden the current exemption criteria for filing SEDs to include an exemption for company-owned tools of trade.

Based upon reviews by the Bureau of Export Administration (BXA) and the U.S. Customs Service, the Census Bureau determined that, for statistical purposes, it is not necessary to collect information on temporary exports of company-owned tools of trade that do not normally require an export license or that are exported without a license as specified in 15 CFR 740.9 of the BXA Export Administration Regulations (EAR). For SED filing exemption purposes, the Census Bureau will include certain provisions of 15 CFR 740.9 of the EAR in its criteria for exemptions to the SED filing requirements.

Therefore, the Bureau of the Census is amending 15 CFR 30.56 (b) to include an exemption to SED filing requirements for exports of company-owned tools of trade, which are reasonable kinds and quantities of commodities and software for use by employees or representatives of the company in its enterprises or undertakings abroad. Commodities and software are eligible for export under this exemption provided that the commodities and software:

(1) Are owned by the individual or the exporting company;

(2) *Accompany* the individual exporter, employee or representative of the exporting company;

(3) Are necessary and appropriate and intended for the personal and/or business use of the individual exporter, employee or representative of the company or business;

(4) Are not for sale; and

(5) Are returned to the United States no later than one year from the date of export.

This revision to 15 CFR 30.56 (b) will increase the conditional exemptions for tools of trade owned by individuals, companies and/or businesses and minimize the reporting burden for filing an SED.

Response to Comments

The Census Bureau issued a Notice of Proposed Rulemaking and Request for Comments in the **Federal Register** (62 FR 36242) on Monday, July 7, 1997. The Bureau of the Census received four letters commenting on the proposed rule. All of the letters expressed support for the proposal and recommended prompt enactment of the final rule. No changes were made to the final rule as a result of comments received.

Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedure Act because it deals with a foreign affairs function (5 U.S.C. (A) (1)).

Because a notice of proposed rulemaking was not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis was not required and was not prepared (5 U.S.C. 603(a)).

This rule is exempt from the requirements of Executive Order 12866.

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule covers collections of information subject to the provisions of the Paperwork Reduction Act, which are cleared by the Office of Management and Budget under OMB control numbers 0607–0001, 0607–0018, and 0607–0152.

This rule will result in a reduction of reporting-hour burden requirements under provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Exports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 30 is amended as follows:

PART 30—FOREIGN TRADE STATISTICS REGULATIONS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., p. 1004); Department of Commerce Organization Order No. 35–2A. August 4, 1975, 40 CFR 42765.

Subpart D—Exemptions from the Requirements for the Filing of Shipper's Export Declarations

2. Section 30.56 (b) is revised to read as follows:

§ 30.56 Conditional exemptions.

* * * * *

(b) Tools of trade are usual and reasonable kinds and quantities of commodities and software, and their containers, that are intended for use by individual exporters or by employees or representatives of the exporting company in furthering the enterprises and undertakings of the exporter abroad. Commodities and software eligible for this exemption are those that do not normally require an export license or that are exported without a license as specified in 15 CFR 740.9 of the EAR (15 CFR chapter VII, subchapter C) and are subject to the following provisions:

(1) Are owned by the individual exporter or exporting company;

(2) Accompany the individual exporter, employee or representative of the exporting company;

(3) Are necessary and appropriate and intended for the personal and/or business use of the individual exporter, employee or representative of the company or business;

(4) Are not for sale; and

(5) Are returned to the United States no later than one year from the date of export.

* * * * *

Dated: September 5, 1997.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 97–25021 Filed 9–19–97; 8:45 am]

BILLING CODE 3510–07–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AE67

Supplementary Security Income; Overpayment Recovery by Offset of Federal Income Tax Refund

AGENCY: Social Security Administration

ACTION: Final rules.

SUMMARY: These final regulations govern use of the Federal income tax refund offset program established under section 2653 of the Deficit Reduction Act of 1984, Pub. L. No. 98–369. They permit the recovery of supplemental security income (SSI) overpayments through the withholding of amounts due to former SSI recipients as Federal income tax refunds. In these rules, we reflect the provisions of the statute and explain the procedures that we will follow in referring SSI overpayments to the Department of the Treasury for income tax refund offset (TRO).

EFFECTIVE DATE: These final rules are effective September 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–5121. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Section 2653 of the Deficit Reduction Act of 1984, codified at 31 U.S.C. § 3720A and 26 U.S.C. § 6402(d), authorized the Secretary of the Treasury, upon receiving notice from a Federal agency that a named individual owes the agency a past-due, legally enforceable debt, to withhold all or a part of any income tax refund that is due to the debtor and pay the amount withheld to the agency. Section 2653 specifically precluded the use of these procedures to recover overpayments of Social Security benefits paid under title II of the Social Security Act (the Act). Under 31 U.S.C. § 3720A, a Federal agency that is owed a past-due, legally enforceable debt by an individual shall notify the Secretary of the Treasury of the debt in accordance with regulations issued by the Department of the Treasury. The applicable Treasury regulations are codified at 31 CFR Part 285 (62 FR 34175). Before an agency may refer a debt to Treasury, it must, under 31 U.S.C. § 3720A, take the following actions: (1) notify the debtor that the agency proposes to refer the debt for tax refund offset; (2) give the debtor at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable; (3) consider all evidence the debtor presents in determining that all or a part of the debt is past-due and legally enforceable; and (4) satisfy any other conditions that the Secretary of the Treasury may prescribe to ensure that the agency's findings are valid and that the agency has made reasonable efforts to obtain the payment of the debt.

Although section 2653 gave us the authority to use the TRO provisions to recover overpayments made to recipients of SSI payments under title XVI of the Act, we elected not to do so at that time because we did not think it appropriate to use a procedure we were precluded from using to recover title II overpayments to recover overpayments made under the needs-based title XVI program.

Section 5129 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) removed the restriction on using the TRO provisions to recover title II overpayments. Section 5129 added several additional conditions to the referral of title II overpayments for offset. These included: (1) the overpaid individual may not be currently entitled to Social Security benefits under title II of the Act; (2) the notice that we send to the overpaid individual concerning our intent to seek the offset must describe the conditions under which we are required to waive recovery of an overpayment under section 204(b) of the Act; and (3) if the overpaid individual requests that we waive recovery of the overpayment within the 60-day period allowed under the program for presenting evidence that the debt is not past due or not legally enforceable, we may not certify the overpayment to Treasury without first issuing a determination on the waiver request. We issued final regulations on October 21, 1991 (56 FR 52466) implementing these statutory changes.

Since that time, we have been modifying our computer systems to extend the TRO provisions to various subgroups of former title II program beneficiaries. We now have the necessary systems modifications in place to permit us to extend the TRO provisions to the title XVI program, as well. These title XVI rules closely follow the existing rules for the title II program, including the same conditions that the OBRA 90 legislation required for the title II program. That is, these rules provide that: (1) the overpaid individual may not currently be eligible to receive SSI payments under title XVI of the Act; (2) the notice we send to the overpaid individual concerning our intent to seek offset must describe the conditions under which we are required to waive recovery of an overpayment under section 1631(b)(1)(B) of the Act; and (3) if the overpaid individual requests that we waive recovery of the overpayment within the 60-day period allowed under the program for presenting evidence that the debt is not past due or legally enforceable, we may not certify the overpayment to Treasury without first issuing a determination on the waiver request.

On June 23, 1997, we published proposed rules in the **Federal Register** at 62 FR 33778 and provided a 30-day period for interested individuals to comment. We received no comments. We are, therefore, publishing these rules essentially unchanged.

Explanation of Changes to Regulations

We are adding new §§ 416.580 through 416.586 to our regulations to explain our rules on recovery of title XVI overpayments through the withholding of amounts due to former SSI recipients as Federal income tax refunds. Section 416.580 provides general information about the tax refund offset program and explains that we may pursue collection of an overpayment through this program if the overpaid individual is not eligible for benefits. This new regulatory section also explains that we will not initiate the tax refund offset to collect an overpayment more than 10 years after our right to collect the overpayment first accrued, thereby making this section consistent with proposed TRO regulations for title II (62 FR 42439) and the applicable Department of the Treasury regulations (31 CFR Part 285).

Section 416.581 explains that, before we refer an overpayment to the Treasury Department, we will notify the overpaid individual of our intention to do so. This notice will advise the individual of the amount of the overpayment and the conditions under which we will waive recovery of an overpayment under section 1631(b)(1)(B) of the Act. The notice will also explain that unless, within 60 days from the date of our notice, the overpaid individual repays the overpayment, presents evidence that the overpayment is not past due or not legally enforceable, or requests a waiver of the overpayment, we will refer the overpayment to the Department of the Treasury to offset any tax refund payable to the overpaid individual. The notice additionally will advise the individual of the right to inspect and copy our records related to the overpayment.

Sections 416.582 and 416.583 explain our procedures for reviewing and making findings when an overpaid individual submits evidence that an overpayment is not past due or not legally enforceable.

Section 416.584 explains our procedures for the overpaid individual who wishes to review our records related to the overpayment.

Section 416.585 explains that if, within 60 days after the date of our notice of intent to seek an offset, an individual presents evidence that the overpayment is not past due or not legally enforceable or asks us to waive collection of the overpayment, we will suspend our referral of the overpayment to the Department of the Treasury for offset until we issue written findings that affirm that all or a part of the overpayment is past due and legally enforceable and, where appropriate, determine that waiver of the overpayment is unwarranted.

Section 416.586 sets out our intention, in cases where a tax refund is insufficient in a tax year to satisfy the amount of the overpayment, to continue to offset in succeeding years any amount of the overpayment that remains, as long as the remainder of the overpayment continues to meet the criteria for referral under the tax refund offset program in succeeding years. This differs from our title II rules on TRO which provide that, where a tax refund is insufficient to recover an overpayment in a given year, we will recertify the remainder for offset in the following year. This proposed section reflects the fact that the Department of the Treasury now has the systems capability to retain the overpaid amount in their records for offset against future tax refunds the individual may be due. On August 7, 1997, we published separate proposed rules dealing with title II overpayments that would make this same change in the title II TRO rules (62 FR 42439).

We are also adding to § 416.1403(a) a new paragraph (17) that includes in the list of administrative actions that are not initial determinations findings on whether we can collect an SSI overpayment by using the Federal income tax refund offset procedure. Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart N of our regulations, and they are not subject to judicial review.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Pub. L. 103–296, the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides in 5 U.S.C. 553(d)(3) for an exception to the requirement of publication of a substantive rule 30 days before its effective date for good cause. In order to use the TRO provisions to recover title XVI overpayments from income tax refunds payable in 1998, these final rules must be effective in early October 1997, so that we can begin notifying individuals that we propose to refer their overpayments to the Department of the Treasury for offset. Any delay in sending the notices and referring these debts to Treasury will result in lost program savings of up to $6 million. These final rules benefit the public by allowing for substantial program savings, while adequately safeguarding the rights of former SSI recipients by giving overpaid individuals the right to repay the amount, present evidence that the overpayment is not past due or not legally enforceable, or request us to waive collection of the overpayment, before referral to the Department of the Treasury is made. We will issue written findings affirming that all or part of the overpayment is past due and legally enforceable and, where appropriate, determine that waiver of the overpayment is unwarranted before making such a referral. In light of these considerations, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Programs: No. 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: September 12, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, subparts E and N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended to read as follows:

1. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 702(a)(5), 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1381, 1381a, 1382 (c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

2. Sections 416.580, 416.581, 416.582, 416.583, 416.584, 416.585, and 416.586 are added to subpart E to read as follows:

§ 416.580 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

(a) The standards we will apply and the procedures we will follow before requesting the Department of the Treasury to offset income tax refunds due taxpayers who have an outstanding overpayment are set forth in §§ 416.580 through 416.586 of this subpart. These standards and procedures are authorized by the Deficit Reduction Act of 1984 [31 U.S.C. § 3720A], as implemented through Department of the Treasury regulations at 31 CFR 285.2.

(b) We will use the Department of the Treasury tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable, and eligible for tax refund offset under regulations issued by the Secretary of the Treasury. We will use these procedures to collect overpayments only from individuals who are not currently entitled to monthly supplemental security income benefits under title XVI of the Act. We will refer an overpayment to the Secretary of the Treasury for offset against tax refunds no later than 10 years after our right to collect the overpayment first accrued.

§ 416.581 Notice to overpaid individual.

A request for reduction of a Federal income tax refund will be made only after we determine that an amount is owed and past due and provide the overpaid individual with 60 calendar days written notice. Our notice of intent to collect an overpayment through Federal income tax refund offset will state:

(a) The amount of the overpayment;

(b) That unless, within 60 calendar days from the date of our notice, the overpaid individual repays the overpayment, sends evidence to us at the address given in our notice that the overpayment is not past due or not legally enforceable, or asks us to waive collection of the overpayment under section 1631(b)(1)(B) of the Act, we intend to seek collection of the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid individual as refunds of Federal income taxes by an amount equal to the amount of the overpayment;

(c) The conditions under which we will waive recovery of an overpayment under section 1631(b)(1)(B) of the Act;

(d) That we will review any evidence presented that the overpayment is not past due or not legally enforceable;

(e) That the overpaid individual has the right to inspect and copy our records related to the overpayment as determined by us and will be informed as to where and when the inspection and copying can be done after we receive notice from the overpaid individual that inspection and copying are requested.

§ 416.582 Review within SSA that an overpayment is past due and legally enforceable.

(a) *Notification by overpaid individual.*—An overpaid individual who receives a notice as described in § 416.581 of this subpart has the right to present evidence that all or part of the overpayment is not past due or not legally enforceable. To exercise this right, the individual must notify us and present evidence regarding the overpayment within 60 calendar days from the date of our notice.

(b) *Submission of evidence.* The overpaid individual may submit evidence showing that all or part of the debt is not past due or not legally enforceable as provided in paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in referral of the overpayment to the Department of the Treasury, unless the overpaid individual, within this 60-day time period, has asked us to waive collection of the overpayment under section 1631(b)(1)(B) of the Act and we have not yet determined whether we can grant the waiver request. If the overpaid individual asks us to waive collection of the overpayment, we may ask that evidence to support the request be submitted to us.

(c) *Review of the evidence.* After a timely submission of evidence by the overpaid individual, we will consider all available evidence related to the overpayment. We will make findings based on a review of the written record, unless we determine that the question of indebtedness cannot be resolved by a review of the documentary evidence.

§ 416.583 Findings by SSA.

(a) Following the review of the record, we will issue written findings which include supporting rationale for the findings. Issuance of these findings concerning whether the overpayment or part of the overpayment is past due and legally enforceable is the final Agency action with respect to the past-due status and enforceability of the overpayment. If we make a determination that a waiver request cannot be granted, we will issue a written notice of this determination in accordance with the regulations in subpart E of this part. Our referral of the overpayment to the Department of the Treasury will not be suspended under § 416.585 of this subpart pending any further administrative review of the waiver request that the individual may seek.

(b) Copies of the findings described in paragraph (a) of this section will be distributed to the overpaid individual and the overpaid individual's attorney or other representative, if any.

(c) If the findings referred to in paragraph (a) of this section affirm that all or part of the overpayment is past due and legally enforceable and, if waiver is requested and we determine that the request cannot be granted, we will refer the overpayment to the Department of the Treasury. However, no referral will be made if, based on our review of the overpayment, we reverse our prior finding that the overpayment is past due and legally enforceable or, upon consideration of a waiver request, we determine that waiver of our collection of the overpayment is appropriate.

§ 416.584 Review of our records related to the overpayment.

(a) *Notification by the overpaid individual.* An overpaid individual who intends to inspect or copy our records related to the overpayment as determined by us must notify us stating his or her intention to inspect or copy.

(b) *Our response.* In response to a notification by the overpaid individual as described in paragraph (a) of this section, we will notify the overpaid individual of the location and time when the overpaid individual may inspect or copy our records related to the overpayment. We may also, at our discretion, mail copies of the overpayment-related records to the overpaid individual.

§ 416.585 Suspension of offset.

If, within 60 days of the date of the notice described in § 416.581 of this subpart, the overpaid individual notifies us that he or she is exercising a right described in § 416.582(a) of this subpart and submits evidence pursuant to § 416.582(b) of this subpart or requests a waiver under § 416.550 of this subpart, we will suspend any notice to the Department of the Treasury until we have issued written findings that affirm that an overpayment is past due and legally enforceable and, if applicable, make a determination that a waiver request cannot be granted.

§ 416.586 Tax refund insufficient to cover amount of overpayment.

If a tax refund is insufficient to recover an overpayment in a given year, the case will remain with the Department of the Treasury for succeeding years, assuming that all criteria for certification are met at that time.

3. The authority citation for subpart N is revised to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); 31 U.S.C. 3720A.

4. Section 416.1403 is amended by deleting the word ''and'' at the end of paragraph (a)(15), replacing the period at the end of paragraph (a)(16) with ''; and'', and adding paragraph (a)(17) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(17) Findings on whether we can collect an overpayment by using the Federal income tax refund offset procedure. (See § 416.583).

* * * * *

[FR Doc. 97–25023 Filed 9–19–97; 8:45 am]

BILLING CODE 4190–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH108–1a; FRL–5894–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves a State implementation plan (SIP) revision submitted by the State of Ohio on January 3, 1997, which changed the sulfur dioxide limits for the Procter and Gamble Company, Hamilton County, in Ohio Administrative Code (OAC) 3745–18–37. The revised limits provide an actual heat input cap of 922 million British thermal units (BTU) per hour on the combination of all of the Procter and Gamble Company boilers identified in OAC 3745–18–37(GG), to allow for simultaneous operation.

DATES: The direct final approval is effective on November 21, 1997 unless significant adverse or critical comments which have not been previously addressed are received by October 22, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone John Paskevicz at (312) 886–6084 before visiting the Region 5 office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz at (312) 886–6084.

SUPPLEMENTARY INFORMATION:

I. Background

On May 15, 1996, the EPA published a SIP revision completing the approval of the Hamilton County, Ohio sulfur dioxide (SO_2) implementation plan. This plan was approved because it was demonstrated to provide for attainment and maintenance of the SO_2 national ambient air quality standard in Hamilton County. The plan included all major SO_2 sources in the County and listed out each of the appropriate operating parameters in OAC 3745–18–37, as needed to assure attainment and maintenance of the NAAQS as estimated using a rough terrain dispersion model.

On January 3, 1997, Ohio EPA submitted for approval a revision to the Hamilton County SO_2 SIP requesting changes to OAC 3745–18–37(GG), for the air emission sources owned and operated by Procter and Gamble Company. This revision was requested because the original SIP for Procter and Gamble did not provide for the simultaneous operation of the main power boilers while backup boilers are brought on line. The original SIP did not allow for flexibility in operation in the event the main power boilers need to be shut down for maintenance, repaired or operated simultaneously.

The four Procter and Gamble boilers are listed in the documentation to the SIP submittal as having a total maximum heat input capacity of 1098 million BTU/hour. Boiler numbers 1 and 2 are limited to emissions of a maximum of 1.1 pounds of SO_2 per million BTU from each boiler. Boiler number 3 is limited to emissions of a maximum of 1.50 pounds of SO_2 per million BTU actual heat input and average operating rate of 277 million BTU per hour for any calendar day. And boiler number 4 is limited to emissions of a maximum of 2.0 pounds of SO_2 per million BTU using an average operating rate of 450 million BTU per hour for any calendar day.

II. Review of State Submittal

In this submittal, Ohio requests a revision to OAC 3745–18–37(GG) Procter and Gamble sulfur dioxide limits. The revision changes the limits to allow for simultaneous operation of all of the boilers. The submittal provides technical support and includes some of the same material provided for the Hamilton County SIP review submitted in 1993.

In the previous review of the Hamilton County SO_2 SIP, Ohio looked at each of the four boilers at Procter and Gamble individually and made judgments regarding impact at full load of fuel sulfur content on air quality concentrations. Ohio concluded that the two backup boilers could not operate on oil when the main power boilers, using coal, were in operation. Therefore, the backup boilers were not allowed to emit SO_2 and were given a 0.0 pounds of SO_2 per million BTU limit when the main boilers were operating, as presumed, at full load.

In developing this new revision, the approach was to develop a limit for boiler operation in a worst case situation by operating all boilers at the maximum level. The backup boilers with short stacks were operated fully on and then the main boilers, with taller stacks, were brought on. From the State's analysis, Ohio established an allowable cap for all four boilers, based on a concentration to capacity ratio to an operating rate of 922 million BTU per hour daily average. Thus, when in operation, boilers number 1 and 2 are to be limited to a maximum of 1.1 pounds of SO_2 per million BTU actual heat input from each boiler; Boiler number 3 is to be limited to a maximum of 1.50 pounds of SO_2 per million BTU actual heat input at an average operating rate of 277 million BTU per hour; Boiler number 4 is to be limited to a maximum of 2.0 pounds of SO_2 per million BTU actual heat input at an average operating rate of 450 million BTU per hour.

In addition, boiler number 4 shall use a stack no lower than 213 feet above ground level.

As a result of its analysis of Procter and Gamble's emissions, Ohio believes that by capping the limit for all four boilers in any combination of rate configurations, to 922 million BTU per hour the result will continue to maintain air quality concentrations in areas of maximum impact to below the short-term SO_2 standards.

The material submitted by the State in support of this SIP revision contained numerous references regarding the reason for the revision. In addition to the stated need for operational flexibility, it was reported that this revision was needed because the approved rule did not allow for simultaneous operation during start-up and shut-down of boilers during a maintenance or repair scenario. Throughout the submittal there are references to ''* * * simultaneous operation of the main power boilers while back-up boilers are brought on line * * *'', or ''* * * simultaneous operation of boilers during start-ups while maintaining an overall operational cap * * *'', or ''* * * ramping up of the back-up boilers while main power boilers are shutting down for maintenance or repair.'' In a letter to EPA dated February 25, 1994, the apparent intent of the revision expressed by the State is more explicit, ''* * * where boilers 3 and 4 are being taken off-line and boilers 1 and 2 are being brought on line it is imperative for production purposes that there be some degree of simultaneous operation of the four boilers during the transition period * * *.'' It appears from this material that the intent of the revision was for temporary operation at the 922 million BTU per hour cap. However, the rule submitted in this revision allows Procter and Gamble to operate the boilers on a continual basis up to the 922 million BTU per hour cap. This represents a substantial increase in sulfur dioxide emissions over the originally approved rule in the Hamilton County SIP. EPA estimates the emissions increase to be approximately 900 tons of sulfur dioxide per year more under a scenario of continuous operation at the 922 million BTU per hour cap.

The State submits that the air quality analysis, performed by Procter and Gamble and reviewed by Ohio EPA, while operating the boilers at a 922 million BTU per hour cap, shows that the increase in emissions will not affect the short-term air quality. The culpability analysis for this revision, which was based on the original Hamilton County SIP revision, shows that the air quality will not be adversely affected in the short-term for sulfur dioxide. This analysis looked at both the 3-hour and 24-hour standard. EPA had agreed, in the Hamilton County modeling, that the short-term analysis was most critical for this type of evaluation and that the culpability analysis submitted for this revision appears to demonstrate protection of air quality.

III. Final Rulemaking Action

The EPA has reviewed the State's request to cap the operating heat input capacity of the four boilers at Procter and Gamble to 922 million BTU per hour daily average, and has reviewed the materials provided by the State as part of the request. EPA agrees that restricting the total overall capacity to 922 million BTU per hour is shown by modeling to achieve the original ambient air quality goal of the Hamilton County sulfur dioxide implementation plan yet provides the operator total operating flexibility beneath the 922 million BTU per hour cap. Therefore, EPA approves this revision to the Hamilton County plan.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

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 301, subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the 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, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 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).)

E. Audit Privilege SIP Disclaimer

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Section 3745.70–3745.73 of the Ohio Revised Code). EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after through review and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. Today's action does not indicate or imply that the regulations at issue would not be affected by the audit privilege and immunity law, and, after review of the effects of the law, the regulations at issue may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

List of Subjects in 40 CFR Part 52

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

Dated: September 9, 1997.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended as follows by adding paragraph (c)(115) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(115) On January 3, 1997, the Ohio EPA submitted a revision to the Hamilton County sulfur dioxide implementation plan for the Procter and Gamble Company, Ohio Administrative Code 3745–18–37(GG)(2), which limits combined average operating rate of all boilers (B001, B008, B021, and B022) to a maximum of 922 million BTU per hour for any calendar day. Boilers B001 and B008 are each allowed to emit 1.1 pounds of sulfur dioxide per million BTU actual heat input. Boiler B021 is limited to 1.50 pounds of sulfur dioxide per million BTU; and boiler B022 is limited to 2.0 pounds of sulfur dioxide per million BTU average heat input.

(I) Incorporation by reference.

(A) Ohio Administrative Code (OAC) Rule 3745–18–37(GG)(2), Hamilton County emission limits, dated December 17, 1996, for Procter and Gamble Company.

(B) Director's Findings and Orders in the matter of the adoption of amended Rule 3745–18–37 of the Ohio Administrative Code, dated December 17, 1996.

(ii) Additional Materials.

(A) Letter from Ohio EPA Director Donald R. Schregardus to Regional Administrator Valdas Adamkus, dated January 3, 1997.

(B) Letter from Ohio EPA Air Pollution Control Division Chief, Robert Hodanbosi to EPA dated August 11, 1997.

[FR Doc. 97–25105 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA 13–6–6121; WA 55–7130; and WA 57–7132; FRL–5889–5]

Approval and Promulgation of State Implementation Plans: State of Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving parts of four revisions to the Washington State Implementation Plan (SIP) which were submitted by the Washington Department of Ecology (Washington) on January 22, 1993; September 14, 1993; and April 30, 1996 (two revisions), to address the attainment of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO) in the Spokane, Washington urbanized area. In addition, EPA is deferring action on several parts of the SIP revisions and not addressing other parts in this action because they have been superseded by subsequent revisions and were or will be addressed in separate actions. The SIP revisions were submitted by Washington to satisfy certain Federal requirements for an approvable nonattainment area CO SIP for the Spokane nonattainment area in the State of Washington.

EFFECTIVE DATE: October 22, 1997.

ADDRESSES: Copies of Washington's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101; and the Washington Department of Ecology, Attention: Tami Dahlgren, Olympia, Washington 98504–7600, telephone (360) 407–6830; and the Spokane County Air Pollution Control Authority, West 1101 College, suite 403, Spokane, Washington 99201, telephone (509) 456–4727.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW., Washington, DC 20460, as well as the above addresses.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–7369.

SUPPLEMENTARY INFORMATION:

I. Background

A. January 22, 1993, Submittal, Docket # WA 13–6–6121

On January 22, 1993, Washington submitted a SIP revision consisting of a plan for the attainment of the CO NAAQS in the Spokane area. This included a demonstration of attainment by December 31, 1995, of the CO NAAQS and provisions for forecasting and tracking vehicle miles traveled (VMT) in the Spokane area, with contingency measures to be implemented if any estimate of actual VMT in the nonattainment area, or any updated forecast of VMT contained in an annual report for any year prior to attainment, exceeds the number predicted in the most recent VMT forecast. Also included were provisions which have been superseded by subsequent SIP revisions: Reasonably Available Control Measures for residential wood combustion; Reasonably Available Control Technology for point sources; New Source Review; Vehicle Emission Inspection and Maintenance Program; oxygenated fuel; and transportation conformity. On September 14, 1993, Washington submitted a revision to the January 22, 1993, SIP submittal consisting of the 1990 base year emissions inventory and the 1995 projected year emissions inventory. Washington also submitted, on September 29, 1995, a 1993 updated (periodic) emissions inventory for the Spokane area, to meet the requirement of section 187(a)(5) of the CAA for periodic inventories.

B. April 30, 1996, Submittal, Docket # WA 57–7132 (Re VMT, Emissions Estimates, and Oxygenated Fuel Contingency Measure)

On April 30, 1996, Washington submitted a SIP revision consisting of revisions to the previously submitted vehicle emission estimates portion of the 1990 base year emissions inventory and of the 1995 projected year inventory; the emissions budget; VMT estimates and forecasts; and the attainment demonstration. The revision also added a contingency measure (3.5% oxygenated fuel) for failure to attain the NAAQS.

C. April 30, 1996, Submittal (Removal of Two Transportation Control Measures (TCMs)), Docket # WA 55–7130

On April 30, 1996, Washington submitted a SIP revision consisting of the removal of two unimplemented TCMs which had previously been approved by EPA on March 22, 1982, as part of the 1982 Spokane CO SIP.

II. Response To Comments

No comments were received on the June 9, 1997, Notice of Proposed Rulemaking in this matter.

III. Final Action

A. Emissions Inventories (Base Year and Periodic)

EPA is approving that part of the SIP revision submitted by Washington on January 22, 1993, consisting of the 1990 Base Year emissions inventory, and the revisions to that inventory submitted by Washington on April 30, 1996, as meeting the requirements of section 187(a)(1) of the CAA. EPA is also approving the 1993 periodic emissions inventory submitted by Washington on September 29, 1995, as meeting the requirements of section 187(a)(5) of the CAA.

B. VMT/VMT Contingency Measures

EPA is approving that part of the SIP revision submitted by Washington on January 22, 1993, for the purpose of forecasting and tracking VMT in the Spokane area. This approval includes the VMT contingency measures submitted with this revision. EPA is also approving that part of the SIP revision submitted on April 30, 1996, consisting of revisions to the VMT estimates and forecasts.

C. Contingency Measures (3.5 Percent Oxygenated Fuel)

EPA is approving that part of the SIP revision submitted by Washington on April 30, 1996, consisting of a contingency measure which implements a 3.5 percent oxygenated fuel requirement during the CO season in the event that the Spokane area failed to reach attainment of the CO NAAQS by December 31, 1995. It should be noted that EPA has proposed to determine that the Spokane CO nonattainment area did not attain the CO NAAQS by December 31, 1995, as required, and to reclassify the Spokane CO nonattainment area as a ''serious'' nonattainment area. See 61 FR 33879, July 1, 1996. No final action has been taken by EPA to date on that proposal. The oxygenated fuel contingency measure was implemented starting with the 1996/1997 CO season.

D. TCM Deletions

EPA is approving the SIP revision submitted by Washington on April 30, 1996, consisting of the deletion of two unimplemented TCMs from the Spokane CO portion of the SIP. These TCMs were projects involving the widening of Rowan Avenue and the installation of traffic lights along Rowan Avenue; and the construction of an additional part of North River Drive, both of which had been previously approved as part of a SIP revision on March 22, 1982.

E. Attainment Demonstration

EPA is deferring action on that part of the SIP revision submitted by Washington on January 22, 1993, and revised by the SIP revision submitted by Washington on April 30, 1996, which consists of the Spokane CO Attainment Demonstration. EPA has not promulgated a final action on its July 1, 1996, proposal to determine that the Spokane, Washington CO nonattainment area did not attain the CO NAAQS by December 31, 1995, and is unable to take action on the attainment demonstration until a final action is taken on that proposal.

F. Emissions Budget

EPA is deferring action on that part of the SIP revision submitted by Washington on April 30, 1996, consisting of the CO emissions budget. Approval of the emissions budget cannot occur until an attainment demonstration is approved by EPA in the SIP.

G. Reasonably Available Control Measures (RACM)/Reasonably Available Control Technology (RACT)

The SIP revision related to RACM submitted by Washington on January 22, 1993, was superseded by a revision submitted on December 9, 1994, which was approved by EPA on January 27, 1997. See 62 FR 3800. The RACT requirements were approved by EPA in the redesignation to attainment of the Puget Sound and Vancouver CO nonattainment areas. See 61 FR 53323, October 11, 1996, and 61 FR 54560, October 21, 1996.

H. New Source Review

The SIP revision relating to New Source Review which was submitted by Washington on January 22, 1993, was superseded by a revision submitted by Washington on March 8, 1994, which was approved by EPA on June 2, 1995. See 60 FR 28726.

I. Vehicle Emission Inspection and Maintenance Program

The SIP revision relating to the Vehicle Emission Inspection and Maintenance Program which was submitted by Washington on January 22, 1993, was superseded by a revision submitted by Washington on August 21, 1995, which was approved by EPA on September 25, 1996. See 61 FR 50235.

J. Oxygenated Fuels

The SIP revision related to oxygenated fuels submitted by Washington on January 22, 1993, was approved by EPA on January 20, 1994. See 59 FR 2994.

K. Transportation Conformity

EPA is taking no action at this time on that part of the SIP revision relating to transportation conformity submitted by Washington on January 22, 1993. This was superseded by a revision submitted by Washington on May 30, 1995, which was further revised by a SIP revision submitted by Washington on November 30, 1995. EPA will act on this submittal separately from this action.

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

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 Regional 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 CAA, 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 Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule 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 herein 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), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 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, Incorporation by reference, Intergovernmental relations.

Dated: August 25, 1997.

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: 42 U.S.C. 7401–7671q.

Subpart WW-Washington

2. Section 52.2470 is amended by adding paragraph (c)(75) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(75) On January 22, 1993, September 14, 1993, and April 30, 1996, the Director of the Washington Department of Ecology (Washington) submitted to the Regional Administrator of EPA four revisions to the State Implementation Plan consisting of amendments to the Spokane CO SIP.

(i) Incorporation by reference.

(A) Letter dated January 22, 1993, from Washington to EPA requesting approval of revisions to the Spokane CO portion of the Washington State Implementation Plan; the ''Supplement to the State Implementation Plan for Washington State, Spokane Carbon Monoxide Nonattainment Area,'' dated January 1993, Sections 6.0, 6.1, 6.3, and 6.4.

(B) Letter dated September 14, 1993, from Washington to EPA providing supplementary information to that submitted on January 22, 1993; ''Spokane County Carbon Monoxide Non-attainment Area 1990 Base Year Emissions Inventory,'' dated November 1992.

(C) Two letters dated April 30, 1996, from Washington to EPA submitting two revisions to the State Implementation Plan; ''Supplement to A Plan for Attaining and Maintaining National Ambient Air Quality Standards for the Spokane Carbon Monoxide Nonattainment Area,'' dated March 1995; and ''Supplement to the State Implementation Plan for Washington State, Spokane County Carbon Monoxide Nonattainment Area, Supplement 1 of 2,'' replacement pages for Sections 2.5 and 6.2 of Section 4.5.2.CO.1 of the State Implementation Plan, dated January 1996; and ''Supplement to the State Implementation Plan for Washington State, Spokane County Carbon Monoxide Nonattainment Area, Supplement 2 of 2,'' new Section 10.0, Contingency Measures, of Section 4.5.2.CO.1 of the State Implementation Plan, dated January 1996.

(ii) Additional material.

(A) Letter of September 29, 1995, submitting CO Periodic Emission Inventory Reports; ''Spokane County Carbon Monoxide Nonattainment Area, 1993 Periodic Update Emissions Inventory,'' dated September 1995.

[FR Doc. 97–24420 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5893–8]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Union Pacific Railroad Sludge Pit Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces the deletion of the Union Pacific Railroad Sludge Pit site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Idaho Division of Environmental Quality have determined that no further cleanup under CERLCA is appropriate and that the selected remedy has been protective of human health and the environment.

EFFECTIVE DATE: September 22, 1997.

FOR FURTHER INFORMATION CONTACT: Deborah J. Yamamoto, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Mailstop ECL–113, Seattle, WA 98101, (206) 553–7216 or 1–800–424–4372.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Union Pacific Railroad Sludge Pit, Pocatello, Bannock County, Idaho.

A Notice of Intent to Delete for this site was published July 25, 1997 (61 FR 40034). The closing date for comments on the Notice of Intent to Delete was August 24, 1997. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substances Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

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

Dated: September 8, 1997.

Charles E. Findley,

Acting Regional Administrator, Region 10.

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

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing ''Union Pacific Railroad Co., Pocatello, Idaho.''

[FR Doc. 97–24839 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5894–9]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Silver Mountain Mine from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces the deletion of the Silver Mountain Mine site (''the site'') from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology (Ecology) have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health and the environment.

EFFECTIVE DATE: September 22, 1997.

FOR FURTHER INFORMATION CONTACT: Anne D. Dailey, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Mailstop ECL–111, Seattle, WA 98101, (206) 553–2110 or 1–800–424–4372.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Silver Mountain Mine, Tonasket, Okanogan County, Washington.

A Notice of Intent to Delete for this site was published July 30, 1997 (62 FR 40784). The closing date for comments on the Notice of Intent to Delete was August 29, 1997. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

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

Dated: September 8, 1997.

Charles E. Findley,

Acting Regional Administrator, U.S. EPA, Region 10.

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

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the site for ''Silver Mountain Mine, Loomis, Washington.''

[FR Doc. 97–24840 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7672]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT:
Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Connecticut: Cromwell, town of, Middlesex County.	090123	Nov. 15, 1973, Emerg; June 15, 1978, Reg; Sept. 17, 1997, Susp.	Sept. 17, 1997 ..	Sept. 17, 1997.
Massachusetts: Edgartown, town of, Dukes County.	250069	July 7, 1975, Emerg; July 2, 1980, Reg; Sept. 17, 1997, Susp..	......do	Do.
New Hampshire: Keene, city of, Cheshire County.	330023	April 24, 1974, Emerg; Sept. 30, 1983, Reg; Sept. 17, 1997, Susp.	......do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York:				
Brutus, town of, Cayuga County	360104	Sept. 6, 1974, Emerg; April 16, 1979, Reg; Sept. 17, 1997, Susp.	......do	Do.
Gardiner, town of, Ulster County	360856	June 26, 1974, Emerg; Sept. 30, 1982, Reg; Sept. 17, 1997, Susp.	......do	Do.
Region III				
Pennsylvania:				
Lock Haven, city of, Clinton County	420328	Nov. 17, 1972, Emerg; Feb. 2, 1977, Reg; Sept. 17, 1997, Susp.	......do	Do.
Woodward, township of, Clinton County	420337	March 16, 1973, Emerg; Jan. 16, 1980, Reg; Sept. 17, 1997, Susp.	......do	Do.
Region V				
Canal Winchester, village of, Franklin County.	390169	Dec. 26, 1973, Emerg; June 4, 1980, Reg; Sept. 17, 1997, Susp.	......do	Do.
Franklin County, unincorporated areas	390167	April 19, 1973, Emerg; July 5, 1983, Reg; Sept. 17, 1997, Susp.	......do	Do.
Wisconsin: West Bend, city of, Washington County.	550475	Aug. 15, 1975, Emerg; Aug. 2, 1982, Reg; Sept. 17, 1997, Susp.	......do	Do.
Region IX				
Arizona: Apache County, unincorporated areas.	040001	April 11, 1975, Emerg; July 5, 1982, Reg; Sept. 17, 1997, Susp.	......do	Do.
California:				
Dublin, city of, Alameda County	060705	Feb. 3, 1971, Emerg; Apr. 15, 1981, Reg; Sept. 17, 1997, Susp.	......do	Do.
Livermore, city of, Alameda County	060008	Dec. 1, 1972, Emerg; July 5, 1977, Reg; Sept. 17, 1997, Susp.	......do	Do.
Modoc County, unincorporated areas	060192	Feb. 19, 1976, Emerg; Sept. 24, 1984, Reg; Sept. 17, 1997, Susp.	......do	Do.
Region VI				
Oklahoma: Marshall County, unincorporated areas.	400511	Aug. 17, 1983, Emerg; May 28, 1985, Reg; Sept. 30, 1997, Susp.	Sept. 30, 1997	Sept. 30, 1997.
Region VII				
Nebraska: Howard County, unincorporated areas.	310446	June 21, 1993, Emerg; Sept. 30, 1997, Reg; Sept. 30, 1997, Susp.	......do	Do.
Region VIII				
Colorado: Broomfield, city of, Adams, Boulder, and Jefferson Counties.	085073	Feb. 18, 1972, Emerg; Sept. 7, 1973, Reg; Sept. 30, 1997, Susp.	......do	Do.
Montana: Bull Creek, village of, Taney County.	290916	Dec. 6, 1993, Emerg; Sept. 30, 1997 Reg; Sept. 30, 1997, Susp.	......do	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: September 5, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–25103 Filed 9–19–97; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7671]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Minnesota: Herman, city of, Grant County	270576	July 2, 1997.	
North Carolina: Oakboro, town of, Stanly County	370493	July 9, 1997.	
Montana: Belgrade, city of, Gallatin County	300105	......do.	
Illinois: Wyoming, city, of Stark County	170615	July 11, 1997	Mar. 10, 1978.
Kansas: Burdett, city of, Pawnee County	200396	......do	Mar. 26, 1976.
Michigan: Homer, township of, Midland County	260989	July 14, 1997.	
South Dakota: Jackson County, unincorporated areas	460240	July 18, 1997.	
Georgia: Grayson, city of, Gwinnett County	130325	July 22, 1997	July 11, 1975.
Kentucky: Grant County, unincorporated areas	210337	July 25, 1997.	
Michigan:			
Alcona, township of, Alcona County	260996	......do.	
Quincy, township of, Branch County	260997	......do.	
Minnesota:			
Graceville, city of, Big Stone County	270026	......do.	
Waubun, city of, Mahnomen County	270772	......do.	
North Carolina: Franklinton, town of, Franklin County	370497	July 30, 1997.	
Maine: Edgecomb, town of, Lincoln County	230217	Aug. 5, 1997	July 28, 1978.
Oregon: Warm Springs Reservation, Jefferson and Wasco Counties.	410291	Aug. 11, 1997.	
Minnesota:			
McGregor, city of, Aitkin County	270773	Aug. 12, 1997.	
Freeport, city of, Stearns County	270446	Aug. 19, 1997.	
North Dakota: Spirit Lake Reservation, Benson County	380700	......do.	
Michigan:			
Eau Claire, village of, Berrien County	260999	Aug. 20, 1997.	
Monterey, township of, Allegan County	261000	......do.	
Colorado: Hudson, town of, Weld County	080249	......do.	
Michigan: California, township of, Branch County	260998	Aug. 22, 1997.	
Kentucky: Livingston County, unincorporated areas	210146	Aug. 25, 1997.	
Tennessee:			
Putnam County, unincorporated areas	470149	Aug. 27, 1997	Oct. 21, 1977.
White County, unincorporated areas	470365	......do	Dec. 2, 1977.

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Regular Program			
Missouri: West Alton, city of, St. Charles County	290924	July 8, 1997	Aug. 2, 1996.
Washington: Mill Creek, city of, Snohomish County.[1]	530330	July 9, 1997	Sep. 30, 1992.
California: Chino Hills, city of, San Bernardino County	060754	July 11, 1997	Jan. 17, 1997.
Louisiana: Pioneer, village of, West Carroll Parish	220244	......do	NSFHA.
Kentucky: Gallatin County, unincorporated areas	210281	July 20, 1997	Aug. 19, 1997.
Georgia: Bleckley County, unincorporated areas	130280	July 22, 1997	Sep. 6, 1996.
Oklahoma: Martha, town of, Jackson County	400307	Aug. 8, 1997	NFSHA.
South Carolina: Marlboro County, unincorporated areas.	450146	Aug. 11, 1997	Nov. 6, 1991.
Georgia: Crawford County, unincorporated areas	130302	Aug. 12, 1997	Sept. 6, 1996.
Ohio: Tremont City, village of, Clark County	390064	Aug. 13, 1997	May 17, 1990.
Louisiana: Oak Grove, town of, West Carroll Parish	220342	Aug. 18, 1997	NFSHA.
Tennessee: Rutherford, town of, Gibson County	470061	Aug. 27, 1997	Sept. 30, 1983.
Watauga, city of, Carter County	470331	......do	Oct. 16, 1996.
Reinstatements			
Iowa: Moville, city of, Woodbury County	190293	Feb. 23, 1976, Emerg; Sept. 1, 1986, Reg; Sept. 1, 1986, Susp; July 30, 1997, Rein.	Sept. 1, 1986.
Maine: Appleton, town of, Knox County	230073	July 22, 1975, Emerg; Dec. 4, 1985, Reg; Dec. 4, 1985, Susp; Aug. 5, 1997, Rein.	Dec. 4, 1985.
Alabama: Lamar County, unincorporated areas	010271	Mar. 16, 1976, Emerg; June 4, 1990, Reg; June 4, 1990, Susp; Aug. 9, 1997, Rein.	June 4, 1990.
Illinois: Joppa, village of, Massac County	170757	Aug. 16, 1982, Emerg; Mar. 2, 1983, Reg; July 3, 1990, Susp; Aug. 13, 1997 Rein.	Mar. 2, 1983.
Pennsylvania: Murrysville, city of, Westmoreland County.	421207	May 23, 1974, Emerg; Feb. 17, 1982, Reg; Aug. 5, 1997, Susp; Aug. 15, 1997, Rein.	Aug. 5, 1997.
Pennsylvania:			
Hunker, borough of, Westmoreland County	420880	Nov. 14, 1975, Emerg; Nov. 19, 1986, Reg; Aug. 5, 1997, Susp; Aug. 18, 1997, Rein.	Aug. 5, 1997.
Manor, borough of, Westmoreland County	420886	Aug. 29, 1973, Emerg; Sept. 1, 1977, Reg; Aug. 5, 1997, Susp; Aug. 18, 1997, Rein.	Do.
Regular Program Conversions			
Region VI			
Louisiana: Lake Charles, city of, Calcasieu Parish	220040	July 3, 1997; Suspension Withdrawn	July 3, 1997.
Region IX			
Arizona:			
Graham County, unincorporated areas	040032	......do	Do.
Safford, city of, Graham County	040124	......do	Do.
California: Saratoga, city of, Santa Clara County	060351	......do	Do.
Region VI			
Arkansas:			
Charleston, city of, Franklin County	050080	July 17, 1997; Suspension Withdrawn	July 17, 1997.
Franklin County, unincorporated areas	050432	......do	Do.
Ozark, city of, Franklin County	050358	......do	Do.
New Mexico: Silver City, town of, Grant County	350022	......do	Do.
Region VII			
Kansas:			
Olathe, city of, Johnson County	200173	......do	Do.
Overland Park, city of, Johnson County	200174	......do	Do.
Region VIII			
Colorado: Larimer County, unincorporated areas	080101	......do	Do.
Region IX			
California:			
Amador County, unincorporated areas	060015	......do	Do.
Jackson, city of, Amador County	060448	......do	Do.
Region II			
New York:			
Mount Kisco, village of, Westchester County	360918	Aug. 5, 1997; Suspension Withdrawn	Aug. 5, 1997.
New Castle, town of, Westchester County	360921	......do	Do.
Region III			
Pennsylvania:			
Allegheny, township of, Westmoreland County	420869	......do	Do.
Arnold, city of, Westmoreland County	420870	......do	Do.
Arona, borough of, Westmoreland County	420871	......do	Do.
Avonmore, borough of, Westmoreland County	420872	......do	Do.
Bell, township of, Westmoreland County	422185	......do	Do.
Delmont, borough of, Westmoreland County	422177	......do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Derry, borough of, Westmoreland County	420874	......do	Do.
Derry, township of, Westmoreland County	421205	......do	Do.
Donegal, township of, Westmoreland County	422187	......do	Do.
East Huntingdon, township of, Westmoreland County.	422188	......do	Do.
East Vandergrift, borough of, Westmoreland County.	420875	......do	Do.
Export, borough of, Westmoreland County	420876	......do	Do.
Fairfield, township of, Westmoreland County	422189	......do	Do.
Greensburg, city of, Westmoreland County	420877	......do	Do.
Hempfield, township of, Westmoreland County	420878	......do	Do.
Hyde Park, borough of, Westmoreland County	422179	......do	Do.
Irwin, borough of, Westmoreland County	420881	......do	Do.
Jeannette, city of, Westmoreland County	420882	......do	Do.
Latrobe, borough of, Westmoreland County	420883	......do	Do.
Ligonier, borough of, Westmoreland County	422180	......do	Do.
Ligonier, township of, Westmoreland County	420884	......do	Do.
Loyalhanna, township of, Westmoreland County	422190	......do	Do.
Lower Burrell, city of, Westmoreland County	420885	......do	Do.
Monessen, city of, Westmoreland County	420887	......do	Do.
Mount Pleasant, township of, Westmoreland County.	420888	......do	Do.
New Florence, borough of, Westmoreland County	420890	......do	Do.
New Kensington, city of, Westmoreland County	420891	......do	Do.
New Stanton, borough of, Westmoreland County	420892	......do	Do.
North Huntingdon, township of, Westmoreland County.	420893	......do	Do.
North Irwin, borough of, Westmoreland County	422641	......do	Do.
Penn, borough of, Westmoreland County	420895	......do	Do.
Penn, township of, Westmoreland County	422183	......do	Do.
Rostraver, township of, Westmoreland County	422184	......do	Do.
Salem, township of, Westmoreland County	422192	......do	Do.
Scottdale, borough of, Westmoreland County	420896	......do	Do.
Sewickley, township of, Westmoreland County	422193	......do	Do.
Smithton, borough of, Westmoreland County	420899	......do	Do.
South Huntingdon, township of, Westmoreland County.	422194	......do	Do.
Southwest Greensburg, borough of, Westmoreland County.	420901	......do	Do.
St. Clair, township of, Westmoreland County	422191	......do	Do.
Sutersville, borough of, Westmoreland County	420902	......do	Do.
Trafford, borough of, Westmoreland County	420903	......do	Do.
Upper Burrell, township of, Westmoreland County	422195	......do	Do.
Vandergrift, borough of, Westmoreland County	420904	......do	Do.
Washington, township of, Westmoreland County	422196	......do	Do.
West Leechburg, borough of, Westmoreland County.	420905	......do	Do.
West Newton, borough of, Westmoreland County	420906	......do	Do.
Youngwood, borough of, Westmoreland County	420908	......do	Do.
Region VI			
New Mexico:			
Chama, village of, Rio Arriba County	350050	......do	Do.
Rio Arriba County, unincorporated areas	350049	......do	Do.
Oklahoma: Davidson, town of, Tillman County	400204	......do	Do.
Texas: Eastland, city of, Eastland County	480204	......do	Do.
Region I			
Maine:			
Cutler, town of, Washington County	230310	Aug. 19, 1997; Suspension Withdrawn	Aug. 19, 1997.
Perry, town of, Washington County	230319	......do	Do.
New Hampshire: Tilton, town of, Belknap County	330009	......do	Do.
Region III			
Pennsylvania:			
Benton, borough of, Columbia County	421543	......do	Do.
West Brunswick, township of, Schuylkill County	422028	......do	Do.
Virginia:			
Grundy, town of, Buchanan County	510025	......do	Do.
Region IV			
Georgia: Talbot County, unincorporated areas	130396	......do	Do.
Region V			
Illinois: Wood Dale, city of, DuPage County	170224	......do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Michigan: Meyer, township of, Menominee County	260458	......do	Do.
Region IX			
Arizona: Santa Cruz County, unincorporated areas	040090	......do	Do.
California: Hemet, city of, Riverside County	060253	......do	Do.

[1] The City of Mill Creek has adopted the Snohomish County (CID #535534) Flood Insurance Rate Map dated September 30, 1992.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: September 11, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–25104 Filed 9–19–97; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 970829213–7213–01; I.D. 091696A]

RIN 0648–AJ15

Atlantic Coast Weakfish Fishery; Change in Regulations for the Exclusive Economic Zone

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

ACTION: ACTION: Final rule.

SUMMARY: NMFS is issuing regulations for the exclusive economic zone (EEZ) offshore from Maine through Florida that impose a minimum size limit of 12 inches (30.5 cm) (total length); minimum mesh sizes in the EEZ of 3 1/4–inch (8.3 cm) square stretch mesh or 3 3/4–inch (9.5 cm) diamond stretch mesh for trawls, and 2 7/8–inch (7.3 cm) stretch mesh for gill nets; a bycatch possession limit of 150 lb (67 kg) for fisheries using smaller mesh sizes for any one day or trip, whichever is longer; a prohibition on the use of flynets in a closed area of the EEZ off North Carolina, south of Cape Hatteras from 3 nm to about 40 nm offshore; a prohibition on the possession of any weakfish in the closed area of the EEZ off North Carolina when using shrimp trawls or crab trawls; and a requirement that weakfish harvested for commercial purposes in the EEZ be landed only in the following states: Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, or North Carolina. In addition, weakfish fishing must be in accordance with the laws of the state where weakfish are landed if the state's regulations are more restrictive than the Federal regulations. The intent of the regulations is to provide protection to the overfished stock of weakfish, ensure the effectiveness of state regulations, and aid in the rebuilding of the stock.

DATES: Effective October 22, 1997.

ADDRESSES: Copies of supporting documents, including a Final Supplemental Environmental Impact Statement and Regulatory Impact Review (FSEIS/RIR), are available from Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Thomas Meyer/Anne Lange, 301–427–2014.

SUPPLEMENTARY INFORMATION:

Background

The background and rationale for this rule were contained in the preamble to the proposed rule, published in the **Federal Register** on February 14, 1997 (62 FR 6935), and are not repeated here. Additional background for this rule is available and contained in a FSEIS/RIR prepared by NMFS for this rule (see **ADDRESSES**).

Comments and Responses

NMFS received written comments from 17 agencies, states and organizations and five individuals, and held four public hearings attended by 74 individuals, to gather public comments on the proposed rule. Details of both the written comments and the public hearings are provided in the FSEIS/RIR published in the **Federal Register** on July 3, 1997 (62 FR 36062). Written and public hearing comments are summarized here.

Each of the State and Federal agencies and conservation organizations supported the proposed rule and found its measures to be compatible with state and Atlantic States Marine Fisheries Commission (Commission) fishery management plans for weakfish. The U.S. Coast Guard suggested changes to clarify current language and to address several enforcement issues. The U.S. Fish and Wildlife Service fully supported the proposed rule and urged the earliest possible adoption of both the weakfish rule and a proposed rule to implement a program to certify specific Bycatch Reduction Devices (BRDs) for shrimp trawls (final rule published in the **Federal Register** on April 16, 1997 (62 FR 18536)). The Mid-Atlantic Fishery Management Council supported the proposed rule and, based on its comments, an additional public hearing was held in North Carolina to address industry concerns related to the impact of the proposed rule on other fisheries conducted in the closed area off North Carolina.

1. Comment: One agency commented that language, consistent with regulations requiring the use of Turtle Excluder Devices (TEDs) in the summer flounder fishery, should be included in the prohibitions (§ 697.7) to require use of TEDs by vessels using nets in the EEZ north of Cape Hatteras.

Response: Under the requirements of section 7 of the Endangered Species Act, NMFS has evaluated the impact the weakfish fishery may have on turtles. Based on the Biological Opinion issued by NMFS, reasonable and prudent measures will be taken to minimize the impact of the weakfish fishery on sea turtles. This will include development of an effective TED for flynets and a schedule for implementation in flynet gear during the times and areas as required for summer flounder (50 CFR 217.12 and 227.72). In addition, an Incidental Take Statement has been issued by NMFS, anticipating documented lethal or non-lethal takes in the weakfish fishery of a maximum total of 20 loggerhead turtles and two Kemp's ridleys in flynet, bottom trawl, or gillnet gear. Should these levels be exceeded, consultations must be reinitiated.

2. Comment: Several commenters suggested that the proposed closed area line should be modified to be consistent with the line in the North Carolina regulations, which proceeds in a southeasterly direction from Cape

Hatteras, not due east as in the proposed rule.

Response: NMFS agrees. The northern boundary of the line to delineate no flynetting south of Cape Hatteras has been modified to be aligned with the State of North Carolina's line. However, while this line will follow as closely as possible the State's line (40250 Loran C line), it will be defined by latitude/longitude, and enforced as such. Therefore, the line proceeds SE in a straight line from a point, 35°10.8' N. lat., 75°29.2'W. long. (3 nm from Cape Hatteras), generally proceeding along the 40250 LORAN C line, to a point 35°06.5' N. lat., 75°19.4' W. long. (12 nm from Cape Hatteras).

3. Comment: Several commenters were concerned that the proposed regulations could potentially impact other fisheries in the EEZ off the coast of North Carolina.

Response: NMFS believes it is important to maintain the closed area south of Cape Hatteras in order to protect young weakfish. Therefore, flynets will not be allowed in the closed area to fish for spot, croaker, or any other species. Concerns regarding the squid/mackerel/butterfish fishery, which uses a small-mesh trawl similar to a flynet in the original closed area, led NMFS to adjust the closed area so such gears could continue to fish without likelihood of encountering young weakfish. Section 697.7(a)(5), the area closed to flynetting in the proposed rule has been modified. Vessels fishing with other than shrimp trawls (with certified BRDs as required by 50 CFR part 622, Appendix D, and TEDs as required by 50 CFR 227.72(e)(2)(ii)) or summer flounder trawls (with approved TEDs) are prohibited from fishing in the closed area, because they are likely to have a significant bycatch of weakfish. However, they are permitted to fish outside the modified closed area for squid, croaker, spot, or other species. They are limited to a 150–lb (67–kg) weakfish bycatch, unless mesh sizes are larger than those described in this rule. Vessels using gillnets with proper mesh may operate within the no-flynet area.

During the winter of 1996–97, a number of vessels using shrimp trawls to fish for finfish in the closed area produced a significant bycatch and mortality of young weakfish. North Carolina is modifying its regulations to require that vessels possess at least 50 percent shrimp, by weight, to be considered a shrimp vessel and to be permitted in the closed area. The Commission has required North Carolina to demonstrate that it has implemented adequate measures to prevent future directed finfish harvest with shrimp trawls. To support North Carolina and Commission actions, this final rule prohibits the possession of any weakfish by vessels using shrimp trawls in the closed area.

4. Comment: One agency commented that the intent to prohibit vessels from catching weakfish in the EEZ and landing the fish in a ''de minimis'' state (§ 697.7(a)(7)) is not enforceable at landing, since it is impossible to determine where the fish were harvested, either from the EEZ or another state's waters, which may be open.

Response: NMFS believes that while this measure may be difficult to enforce, it will help state agencies enforce their regulations to implement the Commission's weakfish management plan. This measure will prevent a person from saying he/she caught weakfish in the EEZ, when landing for commercial purposes in a ''de minimis'' state or a state that has not declared an interest in weakfish management. This will make circumventing states' closed fishing seasons and other regulations more difficult, since ''de minimis'' states and states without a declared interest have little or no weakfish fisheries. Also, it is important that those states that have requested ''de minimis'' status from the Commission ensure that landings of weakfish in those states remain below the level required to maintain their ''de minimis'' status. While weakfish landings in these states are not expected to increase, if they do increase significantly, the states will be required to assume the responsibilities associated with being a participating state. Therefore, the ''de minimis'' states should also be involved in enforcing this measure. The ''de minimis'' states most likely to be impacted by landings from other states' vessels (South Carolina and Georgia) have detailed monitoring programs and would quickly know if weakfish landings were increasing beyond the ''de minimis'' level. The Commission has specifically requested that the ''de minimis'' language be included in the EEZ rule in order to support Commission efforts in state waters. The Commission has requested that any enforcement problems raised by this provision be forwarded to the Commission's Weakfish Management Board.

5. Comment: One commenter stated that the language to prohibit the possession of more than 150–lb (67–kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when fishing with less than the approved mesh size should be clarified. It should be changed to read:

''To prohibit the possession of more than 150–lb of weakfish during any one day or trip, whichever is longer, in the EEZ when:

(i) Using a mesh size less than 3 1/4 inch (8.3 cm) square stretch mesh or 3 3/4 inch(9.5 cm) diamond stretch mesh for trawls and 2 27/8 inch (7.3) stretch mesh for gill nets; or

(ii) fishing during any closed season for weakfish of the state in which the weakfish are landed.''

Response: NMFS agrees and has included such language in the final rule. However, in the area off North Carolina that is closed to flynetting, no weakfish may be landed in the shrimp fishery (see comment 3). In addition, summer flounder gear, even though it has a larger than required mesh, are allowed only a 150–lb (67–kg) bycatch of weakfish.

6. *Comment:* The proposed rule is not consistent with North Carolina regulations regarding the use of flynets in the closed area south of Cape Hatteras. The proposed rule would only prohibit their use for weakfish, while the State prohibits their use for any species in the closed area.

Response: The intent of the proposed rule was to be compatible with the State's regulation. The prohibitions section in the final rule has been modified to clarify that no fishing with flynets is allowed in the specified area south of Cape Hatteras.

7. Comment: Several individuals commented on the status of the stock, stating that the weakfish stock is recovering strongly, that references to a declining population are not substantiated by coastwide biological information, that the assessment is outdated and incorrect, and that declines in catch are due to shifts to other target species.

Response: Although some signs of recovery are present in the most recent years, their is insufficient evidence to say that the weakfish stock is recovering strongly. Also, while there may have been shifts of effort to other fisheries leading to declines in harvest, the stock assessment uses fishery independent data (data from scientific surveys) on weakfish abundance through most of its range. These surveys demonstrate that there has been a decline in the weakfish stock, though there are signs of improvement in recruitment of the most recent year classes. Weakfish mature early (age 1) and have high fecundity, so they have the ability to recover quickly, given favorable conditions and reduced fishing mortality rates (F). The last stock assessment for which population estimates are available (catch matrix through 1994) indicated that the population bottomed out in 1991 and has recovered somewhat. There may be recent indications of improved recruitment and observations of more, larger (older) fish, in 1996; however, fishing mortality rates for recent years remain very high (about 1.9 for age 2+, with catch matrix through 1995). Improved recruitment will likely cause a prompt and noticeable short-term stock improvement. However, if the fishery continues to operate at high F, the promising recruitment levels will not be reflected in subsequent improvements in the adult population. Until a revised assessment has been completed that indicates improvements in stock status, other than a year or two of good recruitment, it is premature to say the stock is recovering.

The science used by the Commission's weakfish stock assessment and technical committees relies on the best available fishery-dependent and fishery-independent data. The models and analyses involved in the assessment are those that are best suited for the available data. The assessment is based on the coastwide status of the stock and does not look only at local events.

8. Comment: One agency and an individual stated that small- mesh trawls used in the area south of Cape Hatteras must be defined not by their gear parameters but by their fishing intentions (e.g., shrimping as opposed to shrimp trawls; floundering, as opposed to flounder trawls.) Under the proposed rule, it would be legal to finfish using shrimp trawls in the area south of Cape Hatteras, as long as weakfish are not retained. There are substantial data that indicate that this leads to tremendous waste in discards. Flounder trawls have no business in the area south of Cape Hatteras, outside the flounder trawling season. On the other hand, squid fishermen may likely take quantities of weakfish over 150–lb (67–kg) in legitimate squid/mackerel/herring/butterfish operations, but those fish must be discarded. These fisheries should be defined with respect to the amount of the target species on their vessel when they land, and not simply by the nets they use. At least 51 percent of their catch must be comprised of one or more of the target species. Another option would be to consider closed seasons, particularly for the shrimp fishery, to avoid fishing with shrimp trawls during the winter (December 1–April 1).

Response: NMFS is concerned over reports of fishing with small-mesh nets causing the discard of large amounts of weakfish south of Cape Hatteras. However, under the NMFS regulation, a state's more restrictive regulations apply to weakfish caught in the EEZ when those fish are landed in a state. A state could choose to institute such suggested regulations to reduce bycatch on small-mesh fishing vessels landing in the state.

Also, north of Cape Hatteras, in the future, NMFS will consider modifying the regulations to allow states to issue special permits that will allow legitimate small-mesh fisheries for squid/mackerel/herring/butterfish to take more than 150–lb (67–kg) of legal size weakfish during any one day or trip, whichever is longer, in the EEZ during the state's open weakfish season. North Carolina has requested such permits because it believe that larger quantities of legal weakfish may, when the population is moving through the area, be taken during these fisheries directed at other species. This is not expected to occur frequently, but North Carolina wants the ability to allow vessels to land these fish, rather than discard them.

9. Comment: Several commenters stated that the 2 7/8–inch minimum mesh size for gillnets is appropriate for North Carolina during winter; however, they questioned whether this mesh size is conservative for a 12–inch (30.5–cm) weakfish during the spring/summer/fall when weakfish are gravid or well-fed, thereby having greater girth. NMFS should consider a more conservative mesh size during spring/summer/fall (i.e., 3 1/8–inch (7.9–cm) stretch mesh).

Response: NMFS used the mesh sizes approved and required by the Commission because these mesh sizes have been reviewed and approved by the Commission Weakfish Technical Committee and Management Board, and have been implemented by the states. NMFS participates in the Commission review and agrees that these mesh sizes are based on the best information available. If the Commission approves and recommends changes to weakfish mesh sizes, and if NMFS agrees the changes are consistent with the best information available, NMFS will adjust the EEZ mesh regulations to be compatible with the Commission's recommendations.

10. Comment: Several commenters were concerned whether, once a closure of the area south of Cape Hatteras is imposed on flynets, NMFS will be able to open the area to large-mesh flynets in the near future.

Response: Once the stock has recovered, NMFS will consider reopening this area to larger mesh flynetting, if the Commission determines that this gear is appropriate for capturing legal-sized weakfish.

11. Comment: One commenter indicated that New York has taken aggressive management steps to restore weakfish and to ensure a healthy weakfish population. NMFS regulations will complement the regulations already in effect in state waters and can only benefit what is now a severely stressed weakfish population.

Response: NMFS agrees. The intention of this rule is to implement EEZ management measures that are compatible with state and Commission measures already in place in state waters.

12. Comment: One commenter and a conservation organization stated that the status of the Atlantic weakfish stock has been grave for a long time. The unfortunate invalidation of the 1995 NMFS moratorium on weakfish fishing in Federal waters further delayed necessary Federal action for this important stock and makes implementation of current proposed measures for weakfish even more urgent. Federal action to begin to rebuild the weakfish stock is long overdue. Because weakfish fishing operations in the EEZ mainly target large, vulnerable aggregations of juvenile fish, they support a full moratorium on weakfish fishing in Federal waters as a strong conservation measure that is easy to enforce. Given the previous court ruling and the urgency of the situation, however, they support the intention to complement the Commission's weakfish plan.

Response: NMFS agrees that establishing management measures in the EEZ is crucial to the recovery of the weakfish population. Adoption of Amendment 3 to the Commission Weakfish Fishery Management Plan, and its recommendations for compatible actions in Federal waters, should begin to protect and restore the weakfish population.

13. Comment: One commenter stated that he strongly supports the approach taken by NMFS to address the concerns regarding landing weakfish in ''de minimis'' states. However, he suggested that from an administrative standpoint, NMFS may want to explore language that would allow a currently ''de minimis'' state, if it so desires, to declare an interest in the fishery without issuance of a new Federal rule.

Response: NMFS understands that current ''de minimis'' states may, at some future time, declare an interest in participating in the fishery, and language that would allow such a declaration without issuance of a new rule would be useful. However, since the NMFS proposed rule is designed to be compatible with measures implemented by the states, NMFS can not determine what measures may be needed in the EEZ off the coasts of South Carolina and Georgia until they establish measures in their own waters. Once a state's ''de minimis'' status is removed by the Commission, NMFS sees no reason to restrict commercial landings in the state. Therefore, such restrictions will be removed by rulemaking upon notification from the Commission.

14. Comment: One commenter indicated that the statement that shrimp and flounder trawls are the only types of trawls allowed in the area closed to flynets is incorrect. North Carolina also allows crab trawls.

Response: The NMFS proposed rule would have allowed only shrimp or flounder trawls to trawl in the closed area of the EEZ. This was because the rule was intended to prohibit flynets, as in the North Carolina plan, and it was not possible to define a flynet with sufficient specificity for this rule. Therefore, NMFS specified which types of fishing gear would be allowed in the closed area. NMFS contacted the North Carolina Division of Marine Fisheries, which reported few, if any crab nets used in the EEZ off North Carolina; therefore, this gear was excluded.

15. Comment: One industry organization requested that NMFS reconsider closing the entire EEZ south of Cape Hatteras, stating that the current North Carolina state closure to North Carolina vessels was developed in the absence of any standards pertaining to fairness and equitability among fishery participants. North Carolina fishermen have taken a larger reduction in fishing effort compared to fishermen in other states and North Carolina vessels are the only vessels impacted by this regulation. They do not believe that this closure is consistent with national standards of the Magnuson-Stevens Act.

Response: NMFS has reconsidered closing the entire EEZ south of Cape Hatteras and the final rule now closes an area out to only 20–40 nm, not out to 200 nm. The North Carolina plan was approved by the Commission as meeting the fishing mortality reduction requirements in Amendment 3 of the Weakfish FMP. All states were held to the same level of reduction, though it was up to each state to determine how it would meet that reduction. NMFS' proposed regulations were compatible with the states' regulations. Since, under North Carolina regulations, North Carolina vessels may not use a flynet south of Cape Hatteras, this rule does not further restrict North Carolina vessels beyond what the State has already implemented. However, the Federal regulation does apply to all vessels, not just North Carolina vessels, fishing in the modified closed area of the EEZ, south of Cape Hatteras. Therefore, the rule is consistent with the national standards of the Magnuson-Stevens Act.

16. Comment: The NMFS justification not to conduct an Initial Regulatory Flexibility Analysis (IRFA) violates provisions of the Regulatory Flexibility Act. The proposed rule contains four reasons why no IRFA is necessary, all of which are thoroughly invalid.

Response: A regulatory flexibility analysis (RFA) is required when there is a significant economic impact on a substantial number of small entities. NMFS believes that the proposed regulations do not meet the above criteria for development of an RFA because the impacts on small entities have already occurred through state implementation of Amendment 3 to the Commission's Weakfish FMP. These Federal regulations are designed to be compatible with state regulations and will have minimal additional impacts. In the case of North Carolina, the State implemented regulations in October 1996 that closed the entire EEZ south of Cape Hatteras to flynets. This rule has modified the closed area by significantly reducing its size, which will lessen the impact on North Carolina fishermen. However, non-North Carolina vessels are now affected by the Federal closure. There are no records of vessels from states other than North Carolina fishing with flynets in the Federal closed area. North Carolina vessels affected by the regulations are able to fish in other areas or with different gears.

17. Comment: An industry organization requested that, in place of the full EEZ closure, NMFS consider leaving an area outside of 6 nm open to flynet fishing south of Cape Hatteras only during December through March. Flynet vessels using approved mesh size and adhering to minimum fish size would be permitted to fish in that area only during the specified time period.

Response: NMFS has modified the closed area as noted above (comment 3).

18. Comment: One commenter asked why NMFS hasn't continued to pursue a complete moratorium on fishing for weakfish in the EEZ, as was imposed in November 1995.

Response: The NMFS rule, which imposed the moratorium in 1995, was set aside by the court in February 1996. The rule had been developed prior to the Commission's completion of Amendment 3 to the Weakfish FMP as a measure needed to protect weakfish. The final rule accounts for the measures already implemented by the states under the Commission's plan and supports coastwide coordination in the long-term management of this stock.

19. Comment: One individual asked why NMFS doesn't implement a coastwide minimum size of 13 inches (33.0 cm)?

Response: The proposed rule is a first step in developing management measures compatible with those of the Commission. The Commission allows states to implement size limits and other management measures to reduce F. NMFS will consider additional measures, such as a 13–inch (33–mm) minimum size, if the Commission determines further reductions in F are needed in the future.

20. Comment: A North Carolina fishermen association disagreed with the decision that a regulatory flexibility analysis was not needed and stated that the EEZ closure to flynet fishing will significantly impact the flynet fishery.

Response: The North Carolina vessels that will be impacted by the EEZ closure have already been prohibited from a larger area by North Carolina regulations that went into effect on October 1, 1996. Thus the Federal regulation is not expected to have a significant economic impact. Further, the vessels prohibited from the area can move to other areas and fisheries and, in fact, most have already done so. As a result, a regulatory flexibility analysis was not prepared.

Changes from the Proposed Rule

The definition section, § 697.2, of the proposed rule contained 22 definitions. Six of these definitions are already included in 50 CFR 600.10. Any terms defined in § 600.10 are common to all domestic fishing regulations appearing in Chapter VI of title 50 CFR. Therefore, the six definitions were removed from the final rule to avoid duplication. A definition of crab trawls was added.

In response to public, state and Federal agency, and Commission comments, the following changes have been made to the prohibition section, § 697.7, of the proposed rule:

1. The area of the EEZ south of Cape Hatteras, closed to flynetting, has been modified to:

a. Have its northern boundary conform with North Carolina's closed area boundary line;

b. Extend out to only about 20–40 nm from the shore, depending on the contour of the land; and

c. Extend only to the North Carolina—South Carolina state line.

2. The closed area applies to all flynetting, not just flynetting for weakfish.

3. Washington, DC, which had incorrectly been listed as a state where

weakfish caught in the EEZ may be landed, has been removed from the list.

4. A prohibition on the possession of weakfish in the closed EEZ area when using shrimp trawls and crab trawls has been added.

5. Florida was granted ''de minimis'' status by the Commission on August 1, 1997, and is therefore no longer included in the list of states where weakfish harvested for commercial purposes in the EEZ may be landed.

Changes from the Final Supplemental Environmental Impact Statement (FSEIS)

In response to comments from the North Carolina Division of Marine Fisheries (NCDMF) the outer boundary of the closed area south of Cape Hatteras was extended approximately 5 nm seaward of the line defined in the FSEIS to prevent fishing on small weakfish known to concentrate beyond the closed area described in the FSEIS. Also, crab trawls have been included, with shrimp trawls, in the prohibition of possession of weakfish in the closed area of the EEZ off North Carolina.

Classification

The Assistant Administrator for Fisheries has determined that these actions are compatible with the effective implementation of the Commission's coastal FMP, and consistent with the national standards of the Magnuson-Stevens Act. The Secretary has taken into account the data, views, and comments received during the comment period.

Five different alternatives to regulate the harvest of weakfish in the EEZ were examined in the FSEIS/RIR. Alternative D, which applies compatible Federal regulations in the EEZ, provides the greatest support for the Commission's Weakfish Plan. Alternatives prohibiting the harvest and possession or harvest only in the EEZ were also considered, as well as alternatives establishing separate specific regulations in the EEZ, applying state regulations in the EEZ, or doing nothing. NMFS determined that, among the alternatives analyzed, the Federal measures discussed above are the most appropriate measures to support the Commission's Weakfish Plan.

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 when this rule was proposed, that it would not have a significant economic impact on a substantial number of small entities. The reasons for the certification were published in the preamble to proposed rule. NMFS received a comment, addressed above, regarding the certification. This comment did not cause this determination to be changed. As a result, no regulatory flexibility analysis was prepared.

Further information is available in the FSEIS/RIR (See **ADDRESSES**).

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

List of Subjects in 50 CFR Part 697

Administrative practice and procedure, Fisheries, Fishing.

Dated: September 12, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter VI, part 697, is revised to read as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Authority: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

§ 697.1 Purpose and scope.

The regulations in this part implement section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*, and section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, 16 U.S.C. 1851 note, and govern fishing in the EEZ on the Atlantic Coast for species covered by those acts.

§ 697.2 Definitions.

In addition to the definitions in § 600.10 of this chapter, the terms in this part have the following meanings:

Approved TED means any approved Ted as deined at 50 CFR 217.12.

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis* found in the waters of the Atlantic Ocean north of Key West, FL.

Block Island Southeast Light means the aid to navigation light located at Southeast Point, Block Island, RI, and defined as follows: Located at 40°09.2'N. lat., 71°33.1'W. long; is 201 ft (61.3 m) above the water; and is shown from a brick octagonal tower 67 ft (20.4 m) high attached to a dwelling on the southeast point of Block Island, RI.

BRD means bycatch reduction device.

Certified BRDs means any BRD, as defined in 50 CFR part 622 Appendix D: Specifications for Certified BRDs.

Commercial purposes - means for the purpose of selling or bartering all or part of the fish harvested.

Commission means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by Congress in Public Laws 77–539 and 81–721.

Continuous transit means that a vessel does not have fishing gear in the water and remains continuously underway while in the EEZ.

Crab trawl means any trawl net that is rigged for fishing and has a mesh size of 3.0 inches (7.62 cm), as measured between the centers of opposite knots when pulled taut.

De minimis state means any state where the landings are so low that the Commission's Fisheries Management Board has exempted that state from some of its regulatory responsibilities under an Interstate Fishery Management Plan.

Directed fishery means any vessel/person fishing for a stock using gear or strategies intended to catch a given target species, group of species, or size class. For the purpose of this regulation, any vessel/person targeting weakfish.

Flynets, for the purpose of this part, means any trawl net, except shrimp trawl nets containing certified BRDs and approved TEDs, when required under 50 CFR 227.72(e)(2), and except trawl nets that comply with the gear restrictions specified at § 648.104 of this chapter for the summer flounder fishery and contain an approved TED, when required under 50 CFR 227.72(e)(2).

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Montauk Light means the aid to navigation light located at Montauk Point, NY, and defined as follows: Located at 41°04.3'N. lat., 71°51.5'W. long.; is shown from an octagonal, pyramidal tower, 108 ft (32.9 m) high; and has a covered way to a dwelling.

Point Judith Light means the aid to navigation light located at Point Judith, RI, and defined as follows: Located at 41°21.7'N. lat., 71°28.9'W. long.; is 65 ft (19.8 m) above the water; and is shown from an octagonal tower 51 ft (15.5 m) high.

Retain means to fail to return Atlantic striped bass or weakfish to the sea immediately after the hook has been removed or the fish has otherwise been released from the capture gear.

Shrimp trawl net means any trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net, as defined at § 622.2 of this chapter, that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m).

TED (turtle excluder device) means a device designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Weakfish means members of the stock or population of the species *Cynoscion regalis*, found along the Atlantic Coast from southern Florida to Massachusetts Bay.

§ 697.3 Relation to the Magnuson-Stevens Act.

The provisions of sections 307 through 311 of the Magnuson-Stevens Act, as amended, regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson-Stevens Act.

§ 697.4 Relation to state law.

The regulations in this part do not preempt more restrictive state laws, or state enforcement of more restrictive state laws, with respect to weakfish fishing.

§ 697.5 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, permit sanctions, seizures, and forfeitures under the Atlantic Striped Bass Act and the Atlantic Coastal Fisheries Cooperative Management Act, and the regulations in this part.

§ 697.6 Specifically authorized activities.

NMFS may authorize, for the acquisition of information and data, activities that are otherwise prohibited by the regulations in this part.

§ 697.7 Prohibitions.

(a) Atlantic Coast weakfish fishery. In addition to the prohibitions set forth in § 600.725 of this chapter, the following prohibitions apply. It is unlawful for any person to do any of the following:

(1) Fish for, harvest, or possess any weakfish less than 12 inches (30.5 cm) in total length (measured as a straight line along the bottom of the fish from the tip of the lower jaw with the mouth closed to the end of the lower tip of the tail) from the EEZ.

(2) Retain any weakfish less than 12 inches (30.5 cm) in total length taken in or from the EEZ.

(3) Fish for weakfish in the EEZ with a minimum mesh size less than 3 1/4–inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4–inch (9.5–cm) diamond stretch mesh for trawls and 2 7/8–inch (7.3 cm) stretch mesh for gillnets.

(4) To possess more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when using a mesh size less than 3 1/4–inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3 3/4–inch (9.5 cm) diamond stretch mesh for finfish trawls and 2 7/8–inch (7.3 cm) stretch mesh for gillnets.

(5) To fish using a flynet in the EEZ off North Carolina in the area bounded as follows:

(i) On the north by a straight line connecting points 35°10.8’N. lat., 75°29.2’W. long. (3 nm off Cape Hatteras) and 35°03.5’N. lat., 75°11.8’W. long. (20 nm off Cape Hatteras).

(ii) The east by a straight line connecting points 35°03.5’N. lat., 75°11.8’W. long. (20 nm off Cape Hatteras) and 33°21.1’N. lat., 77°57.5’W. long., (about 30 nm off Cape Fear on the extension of the North Carolina/South Carolina state line into the EEZ).

(iii) On the south by a straight line connecting points 33°21.1’N. lat., 77°57.5’W. long., and 33°48.8’N. lat., 78°29.7’W. long. (3 nm off Little River Inlet on the North Carolina/South Carolina state line).

(iv) On the west by state waters.

(6) To possess any weakfish in the closed area of the EEZ, described in Paragraph (a)(5) of this section, when fishing with shrimp trawls or crab trawls.

(7) To land weakfish for commercial purposes caught in the EEZ in any state other than Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, or North Carolina.

(b) *Atlantic striped bass fishery*. In addition to the prohibitions set forth in § 600.725, the following prohibitions apply. It is unlawful for any person to do any of the following:

(1) Fish for Atlantic striped bass in the EEZ.

(2) Harvest any Atlantic striped bass from the EEZ.

(3) Possess any Atlantic striped bass in or from the EEZ, except for the following area: The EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block Island Southeast Light, Block Island, RI. Within this area, possession of Atlantic striped bass is permitted, provided no fishing takes place from the vessel while in the EEZ and the vessel is in continuous transit.

(4) Retain any Atlantic striped bass taken in or from the EEZ.

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Proposed Rules

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes. This proposal would require replacement of the Anti-Skid Control Unit (ASCU) of the aircraft braking system with an improved unit. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent disconnect of the ASCU and reversion to manual braking during operation on runways contaminated by standing water, slush, or wet snow, which could result in reduced braking efficiency.

DATES: Comments must be received by October 20, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–182–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2796; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Docket Number 95–NM–182–AD.’’ The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–182–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 series airplanes. The LBA advises that, during operation on runways contaminated by standing water, slush, or wet snow, a prolonged drop in wheel speed can cause the anti-skid system to switch to manual braking. Investigation revealed that the speed comparator interval of the Anti-Skid Control Unit (ASCU) is too short, which may cause the ASCU to disengage under very slippery conditions. This condition, if not corrected, could result in reduced braking efficiency under slippery runway conditions.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–32–097, dated May 23, 1995, and Revision 1, dated June 1, 1995, which describe procedures for replacement of the ASCU having part number (P/N) AE20464 with an improved ASCU having P/N AE20768. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directive 95–131/4, dated October 19, 1995, in order to assure the continued airworthiness of these airplanes in Germany.

FAA’s Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,620, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

Dornier: Docket 95–NM–182–AD.

Applicability: All Dornier Model 328–100 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent disconnect of the Anti-Skid Control Unit (ASCU) of the aircraft braking system and reversion to manual braking during operation on runways contaminated by standing water, slush, or wet snow, which could result in reduced braking efficiency, accomplish the following:

(a) Within six months after the effective date of this AD, remove the ASCU of the aircraft braking system having part number (P/N) AE20464 and install ASCU having P/N AE20768, in accordance with Dornier Service Bulletin SB–328–32–097, dated May 23, 1995, or Revision 1, dated June 1, 1995.

(b) As of the effective date of this AD, no person shall install on any airplane an ASCU having P/N AE20464.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Note 3: The subject of this AD is addressed in German airworthiness directive 95–131/4, dated October 19, 1995.

Issued in Renton, Washington, on September 16, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25056 Filed 9–19–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–187–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), that is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that currently requires a one-time inspection to determine the tension of the control cables of the thrust reversers, and to detect breakage, damage, wear, or signs of corrosion; and corrective actions, if necessary. This action would require that the inspections be repeated at certain intervals. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the control cables, which may lead to the inability of the thrust reverser to deploy and/or an uncommanded deployment of the thrust reverser while the airplane is in flight.

DATES: Comments must be received by October 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96-NM–187-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace (Operations) Ltd., trading as British Aerospace Airbus Ltd., P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Docket Number 96-NM–187-AD.’’ The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96-NM–187-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 4, 1994, the FAA issued AD 94–17–02, amendment 39–8997 (59 FR 41235, August 11, 1994) applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, to require a one-time inspection to determine the tension of the control cables of the thrust reverser, and correction of the tension, if necessary; a one-time inspection of the cables to detect breakage, damage, wear, or signs of corrosion, and replacement of discrepant cables with serviceable cables; and lubrication of the cables. That action was prompted by a report of a frayed and corroded control cable. The requirements of that AD are intended to prevent failure of the control cables, which may lead to the inability of the thrust reverser to deploy, and subsequently, adversely affect stopping distances and controllability of the airplane on the runway during landing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, advises that two in-service cable failures have resulted in uncommanded deployment of the thrust reverser at engine power idle on the ground on a Model BAC 1–11 500 series airplane. Corrosion, damage or wear of the cables, if not corrected, could lead to cable failure and result in inability of the thrust reverser to deploy and/or an uncommanded deployment of the thrust reverser while the airplane is in flight.

The FAA has determined that additional inspections are necessary to ensure the integrity of the thrust reverser control cables in the stub wing.

Since the thrust reverser system on Model BAC 1–11 500 series airplanes is similar in design to that of Model BAC 1–11 200 and 400 series airplanes, these airplanes are also subject to the same unsafe condition.

Explanation of Relevant Service Information

British Aerospace has issued Alert Service Bulletin 76-A-PM6031, dated January 18, 1995, which describes procedures for repetitive inspections of the control cables of the thrust reverser to determine the tension of the control cables, and correction of the tension, if necessary; inspections of the control cables to detect breakage, damage, wear, or signs of corrosion, and replacement of discrepant control cables with serviceable cables; and lubrication of the cables. The CAA classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD.

The actions currently required by AD 94–17–02 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of AD 94–17–02 on U.S. operators is estimated to be $7,560, or $180 per airplane, per inspection cycle.

The new actions that are proposed in this AD would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new AD on U.S. operators is estimated to be $7,560, or $180 per airplane, per inspection cycle.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ‘‘significant regulatory action’’ under Executive Order 12866; (2) is not a ‘‘significant rule’’ under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8997 (59 FR 41235, August 11, 1994), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace: Docket : 96–NM–187–AD. Supersedes AD 94–17–02, Amendment 39–8997.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the thrust reverser control cables, which may lead to the inability of the thrust reverser to deploy and/or an uncommanded thrust reverser deployment while the airplane is in flight, accomplish the following:

(a) Within 100 hours time-in-service or 30 days after the effective date of this AD, whichever occurs first, perform an inspection to determine the tension of the control cables of the thrust reverser, in accordance with British Aerospace, Alert Service Bulletin 76–A–PM6031, dated January 18, 1995. If the tension of any control cable is outside the limits specified in the alert service bulletin, prior to further flight, correct the tension of that cable in accordance with the alert service bulletin. Thereafter, repeat the inspection at intervals not to exceed 2,400 hours time-in-service or 12 months, whichever occurs first.

(b) Within 100 hours time-in-service or 30 days after the effective date of this AD, whichever occurs first, perform an inspection to detect breakage, damage, wear, or signs of corrosion (swelling) of the control cable of the thrust reverser, in accordance with British Aerospace Alert Service Bulletin 76–A–PM6031, dated January 18, 1995.

(1) If no discrepancy is found, prior to further flight, lubricate the cables in accordance with the alert service bulletin. Thereafter, repeat the inspection at intervals not to exceed 2,400 hours time-in-service or 12 months, whichever occurs first.

(2) If any control cable is damaged, is worn beyond the limits specified in the alert service bulletin, is corroded, or has a broken wire, prior to further flight, replace the discrepant cable with a serviceable cable, and lubricate the cables in accordance with the alert service bulletin. Thereafter, repeat the inspection at intervals not to exceed 2400 hours time-in-service or 12 months after the effective date of this AD, whichever occurs first.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on September 15, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25041 Filed 9–19–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of reopening the public comment period.

SUMMARY: The Minerals Management Service (MMS) is reopening the public comment period under a proposed rule published in the **Federal Register** on January 24, 1997 (62 FR 3742), amending the regulations governing the valuation for royalty purposes of crude oil produced from Federal leases. In the July 3, 1997, **Federal Register** (62 FR 36030), we published a supplementary notice of proposed rulemaking. Based on the diversity of comments received under the proposed rule and the supplementary proposed rule, we are in this notice: publishing a summary of those comments, outlining alternatives for proceeding with further rulemaking, and requesting public comment on those alternatives. MMS intends to hold workshops with State and industry representatives to discuss these and other alternatives. We will announce the dates and locations of those workshops at a later date. MMS intends to issue a further notice of proposed rulemaking following the comment period on this notice.

DATES: We must receive comments on or before October 22, 1997.

ADDRESSES: You must send comments to: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165; telephone (303) 231–3432; fax (303) 231–3194; e-Mail David__Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal author of this notice is Deborah Gibbs Tschudy of the Royalty Management Program.

I. Background

MMS published a notice of proposed rulemaking on January 24, 1997 (62 FR 3741), to amend its current Federal crude oil valuation regulations in 30 CFR part 206. The initial comment period expired March 25, 1997, and was twice extended to April 28, 1997 (62 FR 7189), and to May 28, 1997 (62 FR 19966). As part of the public comment process, we held public meetings in Lakewood, Colorado on April 15, 1997, and Houston, Texas on April 17, 1997, to hear comments on the proposal. On July 3, 1997, we published a supplementary proposed rulemaking (62 FR 36030). The comment period on the supplementary proposed rule closed on August 4, 1997.

II. Summary of Public Comments

We received written comments on the January 24, 1997, proposed rule from 76 entities, including independent oil and gas producers, major oil and gas companies, trade associations, States, economic consultants and analysts, petroleum marketers, a royalty owner, a Native American interest, and individuals. Forty-two speakers provided verbal comments on the proposed rule at the public hearings. We received written comments on the supplementary proposed rule from 32 entities. Below is a summary of the comments on the proposed and supplementary proposed rules. If you are interested in reviewing either the written comments in full or the transcripts of the public meetings, you may contact David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@mms.gov. A complete set of the public comments is also available on the Internet at www.rmp.mms.gov.

States

State commenters generally support the proposed rule, though each has specific suggestions for improvement. Some States supported allowing more payors to pay royalties based on gross proceeds received under arm's-length contracts. One State suggested that MMS could simplify the process without sacrificing value by using published spot prices instead of NYMEX. Another State suggested that MMS take and market its oil in kind.

States generally support the proposal to eliminate the provision in the existing regulations that allows the use of a FERC-approved tariff in lieu of computing actual costs. One State commented that the proposed Form MMS–4415 is too burdensome on lessees and recommended instead using the lowest published tariff rate in calculating differentials. Another State argued that the proposed method for determining differentials allows for double-dipping of transportation costs.

Many States supported the changes proposed in the supplementary rule regarding valuation of crude oil calls, but suggested that gross proceeds be allowed only when the so-called ''most favored nations'' clause is enforced. One State objected to the changes proposed in the supplementary proposed rule and stated that many States believe that gross proceeds should be abandoned altogether. Another State commented that they were not convinced that NYMEX is the proper basis for valuing crude oil produced in the Rocky Mountain Region and suggested that MMS could establish value based on geographic indexing using its own system data. That State commented that MMS would have to insure that posted prices are not included when using system data to determine market prices and that a range of data could be established within a geographic area for comparison purposes.

Industry

The oil and gas industry, both major and independent producers, oppose the proposed rule as well as the supplementary proposed rule. Many industry commenters argued that MMS does not have the legal authority to value production away from the lease and that the NYMEX valuation method is flawed. They believe that value is added by transporting and marketing the oil away from the lease and that this added value exceeds the cost of transportation alone. Many industry commenters stated that futures prices don't provide a dependable measure of current value and that an active lease market does exist for valuing crude oil. Others argue that Rocky Mountain Region prices don't track with NYMEX prices due to the isolated nature of that market.

At least two consultants engaged by industry claim to have evidence that disputes our belief that companies maintain overall balances is totally implausible. Some industry commenters argued that unequal treatment of integrated refiners and independent producers will create market inefficiencies that may discourage investments in downstream operations (pipelines, gathering systems, storage facilities). Nearly all industry commenters suggested that MMS take its royalty in kind to assure that it receives fair market value for its production.

With respect to MMS's proposal for calculating and publishing differentials from aggregations points to market centers, industry commenters stated that (1) Proposed Form MMS–4415 will impose a huge administrative burden, (2) much of the information is not available to many of the lessees, (3) seasonal effects on prices and other dynamic influences on local crude value will not be captured by the differentials, and (4) the differentials don't include all of the costs that should be allowed as a deduction. Industry comments also opposed the proposal to eliminate the provision in the existing regulations that allows the use of a FERC-approved tariff in lieu of computing actual costs.

While some independent producers indicated that they supported the changes made in the supplementary proposed rule, they stated that the continued proposal regarding a lessee's duty to market at no cost to the Federal Government undermines the changes made in the supplementary proposed rule. Some independent producers supported the idea of requiring lessees to certify that they are not maintaining an overall balance with their purchaser. Others recommended that MMS meet with State and industry representatives before adopting any kind of radical changes to crude oil valuation.

III. Alternatives for Proceeding

The intent of the January 24, 1997, proposed rule and the July 3, 1997, supplementary proposed rule was to decrease reliance on oil posted prices, add more certainty to valuation of oil produced from Federal lands, and develop valuation rules that better reflect market value. Because of the frequency of oil exchange agreements, reciprocal deals between crude oil buyers and sellers, and other factors where the real consideration for the transaction could be hidden, MMS proposed using index prices to value production not sold arm's-length. However, because the comments on the proposed rule were substantial, we are considering alternatives for proceeding with a rulemaking on the valuation of oil from Federal leases *in addition to the January 24, 1997, proposed rule and the July 3, 1997, supplementary proposed rule.* We request comments from all interested parties on each of the following alternatives. Those alternatives fall into three categories: (1) Benchmarks, (2) differentials, and (3) index pricing.

While many of the comments, particularly from industry, suggested that MMS take its royalty in kind as an alternative to the proposed NYMEX method (or ANS in California and Alaska), MMS is not requesting comments on that alternative in this notice. MMS has recently completed a feasibility study concerning a royalty-in-kind program and will continue to pursue input on that program through other avenues.

Benchmarks

Alternative 1—Several industry commenters suggested that a lessee be permitted to value its production not sold arm's-length based on prices it receives for outright sales of crude oil in a particular market area or region. Such a program (called a bid-out or tendering program) was described in the comments of two major producers. MMS requests comments on this alternative and specifically whether a certain minimum amount of production should be required to be tendered in a given area before such a price would be acceptable for valuing the remainder of a lessee's production not sold arm's-length.

Alternative 2—In its comments on the supplementary proposed rule, one industry trade association representing independent producers suggested a series of benchmarks for valuing production not sold under arm's-length contracts.

Benchmarks

(1) Outright sales of like-quality crude in the field or area as described in Alternative 1,

(2) The lessee's or its affiliate's arm's-length purchases from producers at the lease in the field or area,

(3) Outright arm's-length sales by third parties,

(4) Prices published by MMS based on its RIK sales,

(5) Netback employing price information from the nearest market center or aggregation point.

MMS requests comments on this alternative. Should the benchmarks be considered in any particular order? Should MMS retain the gross proceeds minimum requirement of the existing regulations, so that value would be the higher of the benchmark value or gross proceeds? With regard to the second and third benchmarks, should a certain minimum amount of production be required to be purchased by a lessee or its affiliate or by third parties before such a price would be acceptable for valuing the remainder of a lessee's production not sold arm's-length? How can MMS verify that those contracts are indeed arm's-length sales and that they reflect the total consideration for the value of production other than through audit? With regard to the fifth benchmark, how should a netback be determined?

Alternative 3—One of the State commenters suggested that MMS establish value based on geographic indexing using its own system data. That State commented that MMS would have to insure that posted prices are not included when using system data to determine market prices and that a range of data could be established within a geographic area for comparison purposes. MMS requests comments on this alternative. Specifically, how can MMS verify, in a timely manner, that the values reported to its data base are correct prior to our publishing this information? On what value do non-arm's-length producers pay until MMS publishes the values contained in its data base?

With regard to Alternatives 1 through 3, we request comments on whether MMS should apply any one of these alternatives only to the Rocky Mountain region while maintaining NYMEX prices as the basis for mid-continent and OCS leases and ANS prices for California and Alaska leases.

Differentials

Alternative 4—Several industry and State commenters commented that the proposed Form MMS–4415 is too burdensome on lessees. One State commented that the proposed method for determining differentials allows for double-dipping of transportation costs. Recently, two major oil producers reached settlement with State and private royalty litigants using fixed rate (cents per barrel) differentials deducted from a NYMEX-based value. MMS requests comments on alternatives for determining the appropriate location and quality differentials to be deducted from the NYMEX method (ANS in California and Alaska) in the January 24, 1997, proposed rule. Specifically, MMS requests comments on the following methods for MMS to calculate and publish location differentials from the lease to the market center:

(1) Differential in cents per barrel by zone or area,

(2) Differential in cents per mile by zone or area,

(3) Differential based on a percentage of the NYMEX (ANS in California and Alaska) value.

MMS also requests comments on alternatives for determining quality differentials from the lease to the market center.

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Alternative 5—One State commenter suggested that MMS could simplify the process without sacrificing value by using published spot prices instead of NYMEX. MMS requests comments on this alternative and whether MMS should then allow actual costs of transportation when production actually flows to the market center where the spot price is published.

IV. Request for Public Comments

We are not requesting comments on the summary of comments outlined in this notice nor on the original proposed rule or supplementary proposed rule. We seek comments only on the alternatives described above or other alternatives suggested for valuing oil from Federal leases. The alternatives listed are not exhaustive. We welcome any new alternatives or any modifications to the proposed alternatives for consideration.

The policy of the Department is, whenever practicable, to give the public an opportunity to participate in the rulemaking process. Accordingly, you should submit written comments, suggestions, or objections regarding this notice to the location identified in the **ADDRESSES** section of this notice. You should submit comments on or before the date identified in the **DATES** section of this notice.

Dated: September 16, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–25101 Filed 9–19–97; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH108–1b; FRL–5894–2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Ohio on January 3, 1997, which would provide greater flexibility for Proctor and Gamble Company, Hamilton County, in operating four boilers, refered to in Ohio Administrative Code 3745–18–37(GG), during periods of change over from the main boilers to the back-up units. In the Final Rules section of this **Federal Register**, EPA is approving this SIP revision as a direct final rule without prior proposal because the agency anticipates no adverse comments. If no adverse written comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. However, if the EPA receives significant adverse comments which have not been

previously addressed, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA does not plan a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 22, 1997.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone John Paskevicz at (312) 886–6084 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, at (312) 886–6084.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 9, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–25096 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970829214–7214–01; I.D. 082097B]

RIN 0648–AJ76

Magnuson-Stevens Act Provisions; Observer Health and Safety

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing regulations that pertain to fishery observers and the vessels that carry them. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended October 11, 1996, requires that the Secretary of Commerce (Secretary) promulgate regulations for ensuring the adequacy and safety of fishing vessels that carry observers. Owners and operators of fishing vessels that carry observers would be required to comply with guidelines, regulations, and conditions in order to ensure that their vessels are adequate and safe for the purposes of carrying an observer and allowing operation of normal observer functions.

DATES: Comments must be received by October 22, 1997.

ADDRESSES: Send comments to Gary Matlock, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William J. Bellows, 301–713-2341.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Act, as amended (16 U.S.C. 1801 *et seq.*), the Marine Mammal Protection Act, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Atlantic Tunas Convention Act, as amended (ATCA; 16 U.S.C. 971 *et seq.*) authorize the Secretary to station observers aboard commercial fishing vessels to collect required scientific data for the purposes of fishery and protected species conservation and management, monitoring incidental mortality and serious injury to marine mammals and to other species listed under the Endangered Species Act (ESA), and monitoring compliance with existing Federal regulations. In addition, pursuant to the South Pacific Tuna Act of 1988 (SPTA; 16 U.S.C. 973 *et seq.*) observers may be required in the South Pacific Tuna Fishery.

The majority of U.S. observer programs are mandatory under the MMPA, or have mandatory coverage authorized by fishery management plans developed under the Magnuson-Stevens Act. Under mandatory programs, observer coverage levels are either prescribed by legislation or there is a mandate to carry an observer if requested to do so by NMFS. Vessels fishing under one of these mandatory programs must have an observer(s) aboard in order to fish legally. Should such a vessel fail to meet the safety requirements as described in this rule, the vessel would not be permitted to fish until the safety requirements are met and the required observer(s) is/are aboard.

While the majority of the observer programs are mandatory, a substantial amount of fishery data is collected through voluntary observer programs. Under these voluntary programs, vessel owners and operators have no legal obligation or requirement to carry an observer but voluntarily carry observers to collect data essential for making fishery conservation and management decisions. The safety, health, and well-being of observers while stationed aboard fishing vessels participating in both mandatory and voluntary programs are of great priority.

The Magnuson-Stevens Act directs that

> * * *the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—
>
> (1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and
>
> (2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

This rule would apply to any vessel designated to carry an observer as part of a mandatory or a voluntary observer program under the Magnuson-Stevens Act, the MMPA, ATCA, SPTA, or any other U.S. law.

This proposed rule would adopt U.S. Coast Guard (USCG) safety inspection standards as minimum requirements a vessel must meet to be deemed safe and adequate for the purposes of carrying observers. Vessels that carry observers would be required to undergo USCG safety inspections, display valid USCG inspection decals or certificates, and maintain safe conditions at all times an observer is aboard as well as during an observer's boarding and disembarking. In addition, vessels would be required to comply with applicable regional requirements governing observer accommodations which may address adequacy, health, and safety concerns beyond the scope of USCG standards.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce made the following certification 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.

> The National Marine Fisheries Service estimates that there are a total of 1,600 vessels carrying observers in NMFS-regulated fisheries. Of these, approximately 1,200 (75%) fit the Small Business Administration's definition of small entity,

and none would be significantly affected by this rule. The proposed rule's requirements that a vessel submit to dockside safety inspections and display a decal or certificate demonstrating compliance with U.S. Coast Guard (USCG) safety regulations merely provide evidence that the vessel is in compliance with existing mandatory USCG safety regulations. The safety inspection would be performed at the dock at no cost to the vessel owner and would take approximately 4 hours. The vessel owner/operator would be able to schedule the inspection at a time that is convenient for the owner/operator, such as when the vessel is at dock. Thus, this rule is not expected to result in any economic loss associated with lost days at sea or any other significant economic impacts on a substantial number of small entities.

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

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: September 15, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service

For the reasons set forth in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. Section 600.725 is amended by redesignating (p) as (t), adding new paragraphs (p), (q), (r), (s), and (u) and revising newly redesignated paragraph (t) to read as follows:

§ 600.725 General prohibitions.

* * * * *

(p) Fail to submit to a USCG safety inspection when required by NMFS pursuant to § 600.746.

(q) Fail to display a Commercial Fishing Vessel Safety decal or a valid certificate of compliance or inspection pursuant to § 600.746.

(r) Fail to provide to an observer, a NMFS employee, or a designated observer provider information that has been requested pursuant to § 600.746, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 600.746.

(s) To fish without an observer when the vessel is required to carry an observer.

(t) Assault, resist, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(u) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

3. In subpart H, § 600.746 is added to read as follows:

§ 600.746 Observers.

(a) *Applicability*. This section applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 *et seq.*), the ATCA (16 U.S.C. 971 *et seq.*), the South Pacific Tuna Act of 1988 (SPTA; 16 U.S.C. 973 *et seq.*), or any other U.S. law.

(b) *Observer requirement*. An observer is not required to board, or stay aboard, a vessel that is unsafe or inadequate as described in paragraph (c).

(c) *Inadequate or unsafe vessels*. (1) A vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions if it does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 648, 660, 678, and 679) or if it has not passed a USCG safety inspection. A vessel that has passed a USCG safety inspection must display one of the following:

(i) A current Commercial Fishing Vessel Safety Decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I;

(ii) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(iii) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(2) Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner/operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually inspect any such item.

(d) *Corrective measures*. If a vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions, NMFS may require the vessel owner or operator either to:

(1) Submit to and pass a USCG safety inspection; or

(2) Correct the deficiency that is rendering the vessel inadequate or unsafe (e.g., if the vessel is missing one personal flotation device (PFD), the owner or operator could be required to obtain an additional one), before that vessel is authorized to fish in fisheries with mandatory observer coverage requirements.

(e) *Timing*. The requirements of this section apply both at the time of the observer's boarding, at all times the observer is aboard, and at the time the observer is disembarking from the vessel.

(f) *Effect of inadequate or unsafe status*. A vessel that would otherwise be required to carry an observer but is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions is prohibited from fishing without observer coverage unless NMFS waives the observer requirement.

[FR Doc. 97–25013 Filed 9–19–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970829212–7212–01; I.D. 080597F]

RIN 0648–AK14

Fisheries of the Exclusive Economic Zone Off Alaska; Allocation of Atka Mackerel to Vessels Using Jig Gear

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 34 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Amendment 34 would authorize an allocation of Atka mackerel to vessels using jig gear. Annually, up to 2 percent of the total allowable catch (TAC) specified for this species in the eastern Aleutian Islands District (AI)/Bering Sea subarea (BS) could be allocated to the jig gear fleet fishing in this area. This action is necessary to provide an opportunity to a localized, small-vessel jig gear fleet to fish for Atka mackerel in summer months. The large-scale trawl fisheries typically harvest the

available TAC for this species early in the fishing year, which does not allow jig gear fishermen an opportunity for a summer fishery. This action is intended to further the goals and objectives of the FMP.

DATES: Comments on the proposed rule must be received at the following address by November 6, 1997.

ADDRESSES: Comments must be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the proposed FMP amendment and the Environmental Assessment/ Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 34 are available from NMFS at the above address, or by calling the Alaska Region, NMFS at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 34 for Secretarial review and a Notice of Availability (NOA) of the FMP amendment was published on August 15, 1997 (62 FR 43689) with comments on the FMP amendment invited through October 14, 1997. Comments on this proposed rule are invited and must be received on or before November 6, 1997. All written comments received by October 14, 1997, whether specifically directed to the FMP amendment, the proposed rule, or both, will be considered in the approval/disapproval decision on the FMP amendment.

Management Background and Need for Action

At its December 1996 meeting, the Council reviewed proposals received from management agencies, the fishing industry, conservation groups, and other interested members of the public for changes to the FMP or regulations implementing the FMP. One proposal received from the Unalaska Native Fishermen's Association requested that 2 percent of the TAC annually specified for Bering Sea Atka mackerel be allocated to vessels using jig gear. The purpose of this proposal was to provide more opportunity to a local small-vessel jig gear fleet to fish for Atka mackerel in late spring and summer months without direct competition from the large, high-capacity trawl fleet that typically harvests the Eastern AI/BS Atka mackerel TAC early in the fishing year.

Under the existing FMP, a closure to directed fishing for Atka mackerel applies to all vessels. Thus, vessels using jig gear are prevented from directed fishing for Atka mackerel once an applicable directed fishing closure is effective, although bycatch amounts of Atka mackerel may be retained during a fishing trip equal to 20 percent of the retained amount of other species open to directed fishing. Atka mackerel may not be retained on board a vessel once Atka mackerel becomes a prohibited species upon attainment of the TAC or because of overfishing concerns for other species taken as bycatch in the Atka mackerel fishery.

Jig gear harvests of Atka mackerel have been constrained to late spring and summer months in the BS near the port of Dutch Harbor, because of the physical limitations of the small boat fleet. In 1997, the directed fishery for Atka mackerel in the Eastern AI/BS was closed February 4. Atka mackerel became a prohibited species on February 28 when the fast-paced trawl fisheries harvested the TAC. As a result, the jig gear fleet will not have an opportunity to fish for this species in 1997.

Based on Alaska Department of Fish and Game (ADF&G) fish tickets, 15 and 19 vessels using jig gear in the BS harvested 36 and 13 metric tons (mt) of Atka mackerel in 1994 and 1995, respectively. These amounts equate to 0.22 percent and 0.09 percent of the Atka mackerel harvest in the Eastern AI/ BS during these 2 years. The ADF&G fish ticket database does not contain records of Atka mackerel harvests by vessels using jig gear in 1996, and jig gear fishermen assert that they did harvest Atka mackerel in 1996. Most Atka mackerel is harvested by the jig gear fleet for use as bait and the catch of fish for personal-use bait is not required to be reported on ADF&G fish tickets. Furthermore, Atka mackerel was not a prohibited species in the Eastern AI/BS during 1996 until August 8, thus providing the jig gear fleet some opportunity for retaining Atka mackerel taken as bycatch in other fisheries. Vessels using jig gear have not fished in the Central or Western AI districts, which is not surprising considering that most vessels using this gear type are less than 60 ft (18.3 m) length overall and fish out of Dutch Harbor.

Information from jig gear fishermen indicate that most of the Atka mackerel harvested by the jig gear fleet is used as bait in the jig gear fishery for Pacific cod, although jig gear fishermen testified to the Council that they would like to develop a fresh fish market for this species. Alternative sources of bait for the Pacific cod jig gear fleet exist, but they can be relatively expensive: for example, bait costs can approach $.50/ lb for frozen herring shipped from the East Coast of the United States. Available catch data also indicate that the harvest of Atka mackerel by vessels using jig gear has been restricted to the southern BS in Federal reporting areas 519 and 518. Conversely, most of the trawl harvest in the Eastern AL/BS occurred in reporting area 541 (Eastern AI).

Vessels using trawl gear harvest over 99 percent of the available Atka mackerel. Most of the retained catch is processed into a headed and gutted product, although surimi production has more than doubled between 1996 and 1997. As a result, the competition within the trawl fleet for access to the Atka mackerel resource is increasing, further aggravating the fast-paced nature of this fishery and the rate at which TAC is reached.

The Council adopted Amendment 34 to the FMP at its June 1997 meeting in response to concerns about the fast-paced nature of the Atka mackerel trawl fishery and the resulting preemption of the small-scale jig gear fishery. The Council's action would authorize an allocation of up to 2 percent of the Atka mackerel TAC specified for the Eastern AI/BS to vessels using jig gear. The Council also voted to annually specify the jig gear allocation during the annual groundfish specifications process based on recent and anticipated harvest capacity. This action was taken in consideration of the small amount of Atka mackerel annually harvested in recent years and to respond to trawl industry concerns about allocating more Atka mackerel to the jig gear fleet than could be harvested. Pending the approval of Amendment 34 by NMFS, the Council indicated its intent to propose a 1–percent allocation of Eastern AI/BS Atka mackerel TAC to vessels using jig gear in 1998.

At this time, neither Federal nor Alaska State reporting systems require catcher vessel operators to report the amount of groundfish harvested for personal use bait. Existing regulations, however, do require that any Atka mackerel landed shoreside for commercial sale or barter be reported on

ADF&G fish tickets, as well as on NMFS weekly production reports submitted by groundfish processors. The current inability to accurately monitor the harvest amount of Atka mackerel used for bait does not pose a management concern at this time. The amount of Atka mackerel harvested for personal use bait in the Pacific cod jig gear fishery is assumed to be very small considering that the total 1996 jig gear harvest of Pacific cod was only about 270 mt. The personal use bait fishery for Atka mackerel, therefore, would easily be accommodated within the jig gear allocation intended by the Council for 1998, or 1 percent of the Eastern AI/BS TAC. This amount equals 150 mt based on the current 1997 TAC amount. Management agencies will need to consider changes to existing reporting programs to more accurately account for the Atka mackerel bait fishery if the total jig gear harvest of this species begins to approach the allocated level due to the development of a fresh fish market and/or an increased harvest of Atka mackerel for personal use bait.

Classification

At this time, NMFS has not determined that Amendment 34 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

An RIR was prepared for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities.

An IRFA was prepared as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. The analysis examined the economic effects of this proposed rule and made the following conclusions: Under the status quo alternative, annual closures of the Eastern AI/BS to directed fishing for Atka mackerel, the area most accessible to the small boat fleet currently using jig gear, likely will continue to occur by early to mid February. Thus any opportunity for the small boat jig fleet to fish for Atka mackerel when weather and sea conditions are more favorable is foregone, and opportunity is lost for these vessels to harvest Atka mackerel for bait or to develop a fresh fish market. Jig gear fishermen who rely on Atka mackerel for use as bait in the Pacific cod fishery would need to pursue other bait alternatives, including the current practice of purchasing bait at $.50/lb that is shipped from the East Coast of the United States.

Under the proposed action, the potential total revenue to vessels using jig gear could range from $52,000 to $104,000 annually, depending on the percentage of TAC allocated to the jig gear fleet and assuming that all Atka mackerel caught are retained and delivered shoreside. These results are intended to show a relative potential for revenue. In reality, these results tend to overstate the potential gains to these vessel operators because of physical limitations in their ability to actually harvest the amount of Atka mackerel allocated to them and the assumption that all Atka mackerel harvested would be retained.

Similarly, the potential loss to vessels using trawl gear in at-sea processing operations ($90,000–$180,000) is likely overstated to the extent that a portion of the Atka mackerel harvested is not retained or to the extent that Atka mackerel TACs or TAC allocations are not fully harvested during a year. Regulatory provisions that would allow incremental allocations to the jig gear fleet upon demonstrated harvest capacity may reduce potential losses to the trawl fleet that could result from an allocation of Atka mackerel to jig gear vessels. No change to the harvest of Atka mackerel by vessels using pot or hook-and-line gear is assumed, because this species is harvested only as bycatch and typically is not retained.

Significant positive impacts on the jig gear fleet could occur under the proposed action to the extent that the jig gear fleet realized potential gains through increased harvests of Atka mackerel. The potential economic benefit to the 19 catcher vessels using jig gear to harvest Atka mackerel in 1995 (small entities) could exceed 5 percent of existing gross annual revenues currently experienced by this fleet. Although quantitative data are not available to assess whether a significant positive economic impact would occur, a 5–percent gain in total annual revenues is not unreasonable under the proposed action.

The Regulatory Flexibility Act requires that the IRFA contain a description of any significant alternatives that would minimize any significant economic impact. Maintaining the status quo would have minimized the impact. However, since the impact is positive, the status quo alternative was not desirable.

Any loss in gross annual revenues that would be incurred by trawl catcher vessels under the proposed action would likely not be significant (exceed 5 percent of a vessel's total annual revenue), because these vessel are larger (> 60 ft (18.29 m) in length) and participate in other lucrative groundfish fisheries, including the Atka mackerel fishery in the Central and Western Aleutians. Potential economic impacts to trawl vessels under the proposed action could be minimized to the extent that the authority to allocate Atka mackerel to vessels using jig gear includes a step-up provision tailored to anticipated jig gear harvest capacity. Impact on the trawl fleet would be minimized further given that such allocation is restricted to the Eastern AI/BS. A copy of the RIR/IRFA is available from NMFS (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 15, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.20, paragraph (a)(8) is redesignated as paragraph (a)(9) and new paragraphs (a)(8) and (c)(6) are added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(8) *BSAI Atka mackerel.*—(i) *TAC by gear.* Vessels using jig gear will be allocated up to 2 percent of the TAC of Atka mackerel specified for the Eastern Aleutian Islands District and Bering Sea subarea, after subtraction of reserves, based on the criteria specified at paragraph (a)(8)(ii) of this section. The remainder of the TAC, after subtraction of reserves, will be allocated to vessels using other authorized gear types.

(ii) *Annual specification.* The percentage of the Atka mackerel TAC specified for the Eastern Aleutian

Islands District and Bering Sea subarea that is allocated annually to vessels using jig gear will be published in the **Federal Register** as part of the proposed and final annual specifications under paragraph (c) of this section. The jig gear allocation will be based on the following criteria:

(A) The amount of Atka mackerel harvested by vessels using jig gear during recent fishing years;

(B) The anticipated harvest of Atka mackerel by vessels using jig gear during the upcoming fishing year; and

(C) The extent to which the jig gear allocation will support the development of a jig gear fishery for Atka mackerel while minimizing the amount of Atka mackerel TAC annually allocated to vessels using jig gear that remains unharvested at the end of the fishing year.

* * * * *

(c) * * *

(6) *BSAI Atka mackerel allocations.* The proposed, interim, and final specifications will specify the allocation of BSAI Atka mackerel among gear types as authorized under paragraph (a)(8) of this section.

* * * * *

[FR Doc. 97–25015 Filed 9–19–97; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 183

Monday, September 22, 1997

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.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting

Board of Directors Meeting

TIME: 9:00 a.m.–12:00 p.m.

PLACE: Capitol Hotel—Little Rock, Arkansas.

DATE: Friday, 26 September 1997.

STATUS: Open.

Agenda

Friday, 26 September 1997

9:00 a.m. Chairman's Report
9:15 a.m. President's Report
9:30 a.m. Board and Country Representative Briefing on ADF's Strategic Plan
12:00 p.m. Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,

President.

[FR Doc. 97–25157 Filed 9–17–97; 5:07 pm]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 16, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification . Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Supplemental Qualifications Statement.

OMB Control Number: 0535–0209.

Summary of Collection: Additional information is requested from applicants for agricultural statistician and mathematical statistician jobs. The information includes ability to communicate orally and in writing and knowledge of the principles of statistics, survey methodology, and computer science.

Need and Use of the Information: The information is used by the selecting official as one of the critical criteria in the job selection process.

Description of Respondents: Individuals or households.

Number of Respondents: 175.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 525.

Animal and Plant Inspection Service

Title: U.S. Origin Health Certificate.

OMB Control Number: 0579–0020.

Summary of Collection: Information is collected concerning the health of animals to be exported to other countries.

Need and Use of the Information: The information is used to make sure animals exported from the United States to other countries meet the import health requirements of that country.

Description of Respondents: Farms; Business or other for-profit; Federal Government.

Number of Respondents: 2,800.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 21,009.

Rural Housing Service

Title: 7 CFR 1902–A, Supervised Bank Accounts.

OMB Control Number: 0575–0158.

Summary of Collection: Information collected includes execution of a deposit agreement and reconciliation of accounts.

Need and Use of the Information: The information is used to ensure loan and grant funds meet the conditions for disbursement before release.

Description of Respondents: Business or other for-profit.

Number of Respondents: 25,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 26,260.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–25070 Filed 9–19–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–001–2]

Handling, Training, and Exhibition of Potentially Dangerous Exotic or Wild Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our notice requesting information concerning what practices are currently used for handling and training potentially dangerous exotic or wild

animals used in exhibition (such as, but not limited to, elephants, lions, or tigers), and what training and experience levels trainers and handlers of such animals have. This reopening and extension will provide interested groups and individuals with additional time to prepare comments on the request for information.

DATES: Consideration will be given only to comments on Docket No. 97–001–1 that are received on or before November 6, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–001–1, 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. 97–001–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1997, we published in the **Federal Register** (62 FR 39802, Docket No. 97–001–1) a notice requesting information concerning the training and handling of potentially dangerous wild and exotic animals used in exhibition in order to obtain a better understanding of the issues pertaining to their welfare.

Comments on the request for information were required to be received on or before September 22, 1997. We received two requests to extend the period during which comments will be accepted. The requests were from an animal welfare organization and an industry association. In response, we are reopening and extending the comment period on Docket No. 97–001–1 for an additional 45 days. This action will allow interested groups and individuals additional time to prepare and submit comments.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 17th day of September 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25069 Filed 9–19–97; 8:45 am]

BILLING CODE 3410–34–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Monday, September 22, 1997, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS: Special Telephonic Meeting (Open)

Agenda

I. Approval of Agenda
II. Announcements
III. FY 1998 Budget & Program Planning

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–25152 Filed 9–17–97; 4:54 p.m.]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 71–97]

Foreign-Trade Zone 149—Freeport, Texas Application for Foreign-Trade Subzone Status Amoco Chemical Company (Petrochemical Complex) Brazoria County, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Freeport, grantee of FTZ 149, requesting special-purpose subzone status for the petrochemical complex of Amoco Chemical Company (Amoco), a subsidiary of Amoco Corporation, located in Brazoria County, Texas. 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 September 9, 1997.

The Amoco petrochemical complex (3,020 acres, 669 employees) consists of two sites in Brazoria County, Texas: *Site 1:* Chocolate Bayou olefins plant (2,334 acres) located on FM 2004 near the city of Alvin, some 50 miles south of Houston, and *Site 2:* Stratton Ridge storage facility (686 acres, eight tanks/8.5 milion-barrel capacity) located at FM 523 near Angleton, some 15 miles southwest of the plant. The olefins plant produces a variety of petrochemical feedstocks and intermediate fuel products, including ethylene (3 billion-lb. capacity), propylene (800 million-lb. capacity), butadiene (200 million-lb. capacity), butene, liquified natural gas, methane, fuel oil, naphtha, and benzene. The petrochemical complex is integrated with the Amoco Oil Company refinery subzone in Texas City, Texas (FTZ 199A, Board Order 731, 60 FR 13118, 3/10/95), which supplies the petrochemical complex with nearly all of its feedstock needs, including foreign-status naphthas, ethane and propane.

Zone procedures would exempt the petrochemical complex from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks (duty-free) by admitting incoming foreign inputs (e.g. naphthas, ethane and propane) in non-privileged foreign status. The duty rates on inputs range from duty-free to 10.5¢/barrel. Under the FTZ Act, certain merchandise in FTZ status is exempt from ad valorem inventory-type taxes. The application indicates that the savings from zone procedures would help improve the refinery'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 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 [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

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, Export Assistance Center, Suite 1160, 500 Dallas, Houston, Texas 77002.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: September 12, 1997.

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 97–25106 Filed 9–19–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091697C]

Caribbean Fishery Management Council; Committee Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Enforcement Committee will hold a meeting.

DATES: The meeting will be held on October 1, 1997, from 10:00 a.m. to 4:00 p.m., approximately.

ADDRESSES: The meeting will be held at the Best Western Hotel Pierre, located at De Diego Ave., Santurce, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Ave., Suite 1108, San Juan, Puerto Rico 00918-2577; telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The Council will hold an Enforcement Committee meeting to discuss topics related to enforcement of the Queen Conch Fishery Management Plan and the proposed MCD off South of St. John, U.S.V.I.

The meeting is open to the public, and will be conducted in English. Interested persons are invited to attend and participate with oral or written statements regarding the agenda issues.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón, Executive Director, at the Council (see **ADDRESSES**), at least 5 days prior to the meeting date.

Dated: September 16, 1997.

Richard W. Surdi,

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

[FR Doc. 97–25040 Filed 9–17–97; 9:19 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091597A]

Marine Mammals; Permit No. 836

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

ACTION: Receipt of application for amendment and issuance of amendment.

SUMMARY: Notice is hereby given that Dr. Daniel P. Costa, University of California, Santa Cruz, 1156 High Street, Santa Cruz, California 95064, has requested an amendment to Permit No. 836, and an amendment has been issued authorizing the conduct of the proposed research.

DATES: Written comments must be received on or before October 22, 1997.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200,Long Beach, CA 90802–4213 (310/980–4001).

Written comments for the record on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application and amended permit to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment to permit no. 836, issued on May 19, 1993 (58 FR 29199) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Permit no. 836 authorizes the permit holder to, among other things, capture and instrument elephant seals ((*Mirounga angustirostris*) at Ano Nuevo, CA and release them at sea up to 200 km from Ano Nuevo to study the effects of low frequency sounds under 1,000 Hz (ATOC). The permit holder has requested authorization to expand the research area to enable him to investigate the potential effect of the Navy's Surface Towed Array Surveillance System Low Frequency Active (SURTASS LFA) system on the behavior of elephant seals (*Mirounga angustirostris*). The amendment request involves no increase in the number of animals currently authorized to be taken under the Permit. Nor does it involve any changes to the currently authorized experimental protocol.

The permit holder states that the operation of the LFA source will occur only between September 15, 1997 to October 11, 1997, and that a significant research opportunity will be lost if the requested authorization is not provided. Therefore, in light of the time constraints and the unique research opportunity that would otherwise be lost, pursuant to Section 104(c)(3)(A) of the Marine Mammal Protection Act and 50 CFR 216.33(e)(6) of the MMPA regulations, we issued an amendment to Permit No. 836 granting the authorization.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 11, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–25012 Filed 9–19–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Notice of Public Hearing and Request for Comments on Procedures for Recording Patent Prosecution File Histories

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Hearing and Request for Public Comments.

SUMMARY: Recent decisions by the Untied States Supreme Court and the United States Court of Appeals for the Federal Circuit highlight the crucial role a prosecution history plays in determining the validity and scope of a patent. *See, e.g., Warner-Jenkinson Co.* v. *Hilton Davis Chem. Co.,* 117 S. Ct. 1040, 41 USPQ2d 1865 (1997); *Markman* v. *Westview Instruments,* 52 F. 3d 967, 34 USPQ2d 1321 (Fed. Cir. 1995), *aff'd,* 116 S. Ct. 1384, 38 USPQ2d 1461 (1996); *Vitronics Corp.* v. *Conceptronic Inc.,* 90 F.3d 1576, 39 USPQ2d 1573 (Fed. Cir. 1996). In response, the United States Patent and Trademark Office (PTO) requests public comments on issues associated with procedures for recording complete and accurate patent prosecution history records. Interested members of the public are invited to testify at the hearing and to present written comments on any of the topics outlined in the supplementary information section of this notice.

DATES: A public hearing will be held on November 18, starting at 9:00 a.m. and ending no later than 5:00 p.m. If sufficient interest warrants, an additional public hearing will be held in an alternate location, for example, in California, or by televideo conference.

Those wishing to present oral testimony at the hearing must request an opportunity to do so no later than November 3, 1997.

To ensure consideration, written comments must be received at the PTO no later than November 18, 1997. Written comments and transcripts of the hearing will be available for public inspection on or about December 1, 1997.

ADDRESSES: The November 18, 1997 hearing will be held in the Commissioner's Conference Room located in Crystal Park Two, Room 912, 2121 Crystal Drive, Arlington, Virginia. Those interested in testifying or in submitting written comments on the topics presented in the supplementary information, or any other related topics, should send their request or written comments to the attention of Mary Critharis addressed to Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231; or John Mr. Whealan addressed to Office of the Solicitor, Box 15667, Arlington, VA 22215. Written comments may be submitted by facsimile transmission to Mary Critharis at (703) 305–8885 or John M. Whealan at (703) 305–9373. Comments may also be submitted by electronic mail through the Internet to mary.critharis@uspto.gov or john.whealan@uspto.gov. Written comments will be maintained for public inspection in Crystal Park Two, Room 902, 2121 Crystal Drive, Arlington, Virginia. Written comments in electronic form may be made available via the PTO's World Wide Web site at http://www/uspto.gov. No requests for presenting oral testimony will be accepted through electronic mail.

FOR FURTHER INFORMATION CONTACT: Mary Critharis by telephone at (703) 305–9300, by facsimile at (703) 305–8885, by electronic mail at mary.critharis@uspto.gov, or by mail addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231; or John M. Whealan by telephone at (703) 305–9035, by facsimile at (703) 305–9373, by electronic mail at john.whealan@uspto.gov, or by mail addressed to Office of the Solicitor, Box 15667, Arlington, VA 22215.

SUPPLEMENTARY INFORMATION:

I. Background

The official record detailing the persecution of a patent application in the United States Patent and Trademark Office (PTO) is more than just a historical record. During the life of a patent, the prosecution record defines the scope of the claimed invention and the patent owner's rights. Thus, the written record must clearly explain the rationale for decisions made during the examination of a patent application, including the basis for the grant. Moreover, once a patent has been granted, the official record will be closely scrutinized by potential licensees, competitors who must avoid infringing the claimed invention, or even those attempting to invalidate the patent. In the event of litigation, the record will serve as a primary basis for court determinations of issues regarding the validity or scope of the patent.

The written record created during the prosecution of a patent application, commonly referred to as the ''file wrapper'' or ''file history,'' consists of all correspondence between an applicant and the PTO. The file history typically consist of the patent application as originally filed, the cited prior art, all papers prepared by the examiner during the course of examination, and documents submitted by the applicant in response to the various requirements, objections, and rejections made by the examiner. In addition, the file history should contain a written record of all oral communications addressing patentability issues between the examiner and applicant. Examiners and applicants share the responsibility for the clarity, accuracy, and completeness of the file wrapper.

Recent decisions by the United States Supreme Court and the United States Court of Appeals for the Federal Circuit emphasize the importance of clear and complete prosecution histories in that they will look more closely at and place greater weight on patent prosecution histories. *See, e.g., Warner-Jenkinson Co.* v. *Hilton Davis Chem. Co.,* 117 S. Ct. 1040, 41 USPQ2d 1865 (1997); *Markman* v. *Westview Instruments,* 52 F.3d 967, 34 USPQ2d 1321 (Fed. Cir. 1995), *aff'd,* 116 S. Ct. 1384, 38 USPQ2d 1461 (1996); *Vitronics Corp.* v. *Conceptronic Inc.,* 90 F.3d 1576, 39 USPQ2d 1573 (Fed. Cir. 1996). For example, in *Warner-Jenkinson,* the Supreme Court explained the importance of the prosecution history of a patent in determining infringement under the doctrine of equivalents. 117 S. Ct. at 1049–51, 41 USPQ2d at 1871–73. Specifically, the Court acknowledged that when the prosecution history reveals that a patent owner amended the claims by adding limitations to overcome the prior art, the patent owner will be estopped from alleging infringement under the doctrine of equivalents as to that amended limitation. *Id.* at 1051, 41 USPQ2d at 1873. Subsequently, the Court held:

> Mindful that claims do indeed serve both a definitional and a notice function, we think the better rule is to place the burden on the patent-holder to establish the reason for an amendment required during patent prosecution * * *. Where no explanation is established, however, the court should presume that the PTO had a substantial reason related to patent-ability for including the limiting element added by amendment.

Id. The emphasis on the written record, including the prosecution history, to interpret the claims is further illustrated by the *Markman* and *Vitronics* decisions. In *Markman,* the Federal Circuit held claim interpretation is a question of law to be determined by the court based on three sources: the claims, the specification, and the prosecution history. 52 F.3d at 979, 34 USPQ2d at 1329. Along the same lines, the Federal Circuit in *Vitronics* opined that intrinsic evidence, which includes the claims, the specification, and the prosecution history, is the ''most significant source'' of evidence to be used when interpreting claims. 90 F.3d 1582, 39 USPQ2d at 1576. In explaining that the claims, the specification, and the prosecution history make up the ''public record'' upon which the public is entitled to rely, the Federal Circuit stated:

[T]he [prosecution] history contains the complete record of all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims. As such, the record before the Patent and Trademark Office is often of critical significance in determining the meaning of the claims.

90 F.3d at 1582, 39 USPQ2d at 1577. The Federal Circuit held that when the public record ''unambiguously describes the scope of the patented invention,'' reliance on extrinsic evidence such as expert testimony is improper. 90 F.3d at 1583, 39 USPQ2d at 1477.

The PTO imposes written recording requirements on both the examiner and applicant. These requirements are designed to furnish the patent applicant, as well as the public and the courts, with sufficient information to make informed decisions. As the agency charged with granting valid patents, the PTO is actively concerned with the development of clear and complete prosecution histories. For this reason, the PTO is interested in obtaining public opinion as to whether the current rules and procedures pertaining to recording prosecution histories are sufficient to provide complete and clear records.

II. Issues for Public Comment

Interested members of the public are invited to testify and present written comments on issues they believe to be relevant to the discussion below. Questions following the discussion are included to identify specific issues upon which the PTO is interested in obtaining public opinion.

A. Current Procedures for Recording Patent Prosecution Histories

The emphasis on preparing complete, clear, and accurate file histories is prevalent throughout the patent rules which form title 37 of the Code of Federal Regulations (CFR) and the guidelines of practice embodied in the Manual of Patent Examining Procedure (M.P.E.P.). Recognizing the importance of the written prosecution record, PTO rules and procedures stress the need for examiners to communicate clearly the basis for all rejections and objections so that the issues can be identified early and the applicant can be given an opportunity to respond. *See* 37 CFR 1.105 (1996); M.P.E.P. 707.07 (6th ed. 1995, rev. 2, July 1996). To meet this goal, Rule 105 explicitly states that ''[t]he examiner's action will be complete as to all matters.'' 37 CFR 1.105. This requires the examiner to treat all claims on their merits, provide authority and support for each ground of rejection, and respond to all arguments and points raised by applicants.

The M.P.E.P. instructs examiners to provide clear and complete Office actions throughout the examination process. For instance, when making rejections such as lack of an adequate written description, the examiner's position should be fully developed and contain detailed reasons rather than a mere conclusion. *See* M.P.E.P. 706.03 (6th ed. 1995, rev. 2, July 1996). Moreover, upon entering an obviousness rejection under 35 U.S.C. 103, the examiner should set forth in the Office action the relevant teachings of the prior art relied upon, the differences between the claimed invention and the applied references, and an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art. M.P.E.P. 706.02(j) (6th ed. 1995, rev. 2, July 1996). Furthermore, in making a final rejection, all outstanding grounds of rejection should be fully developed and clearly set forth to the extent that the remaining issues are readily apparent. M.P.E.P. 706.07 (6th ed. 1995, rev. 2, July 1996).

Concurrent with the examiner's duty to provide clear and fully developed Office actions, Rule 111 mandates an applicant's response to be complete in order to promote an early and full determination of the issues. 37 CFR 1.111 (1996). Current procedure requires that the response by the patent applicant ''must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office action.'' 37 CFR 1.111. Moreover, the requirements of Rule 111 dictate that applicants clearly point out the patentable novelty believed to render the subject claims allowable over the referenced teachings. 37 CFR 1.111. *See* M.P.E.P. 714.02 (6th ed. 1995, rev. 2, July 1996).

Furthermore, to ensure a clear and complete file record, examiners are given the authority to require correction if a response is not complete. *See* M.P.E.P. 714.03 (6th ed. 1995, rev. 2, July 1996). In limited situations, an examiner is authorized to make changes directly to the written portions of the filed application to correct obvious errors such as spelling and minor grammatical errors. M.P.E.P. 1302.04 (6th ed. 1995, rev. 2, July 1996). Other obvious informalities such as changes to the abstract may be corrected by a formal examiner's amendment which is placed in the file wrapper and a copy is mailed to applicants. *Id.* Amendment or cancellation of claims by formal examiner's amendment is permitted when passing an application to issue provided that the changes have been authorized by applicant or applicant's representative. *Id.*

A complete prosecution history should clearly reflect the reasons why the patent application was allowed. According to Rule 109, an examiner may set forth reasons for allowance when the record, as a whole, is unclear as to why the application is allowable over the prior art. 37 CFR 1.109 (1996). Thus, the examiner must make a judgment of the record to determine whether reasons for allowance should be set out in that record. However, the M.P.E.P. cautions examiners to exercise great care in recording reasons for allowance so as not to misconstrue the claims. M.P.E.P. 1302.14 (6th ed. 1995, rev. 2, July 1996). If desired, an applicant may comment on an examiner's statement of reasons for allowance. Although an applicant's comments are entered in the application file, they will not be commented upon by the examiner in charge of the application. *See Id.*

Another facet of patent prosecution in which written records are extremely important is the recordation of interviews conducted between examiners and applicants. Examiner interviews concerning patent applications and other matters pending before the PTO serve to clarify the issues in an application and materially advance the prosecution of a case. The substance of an interview must be made of record in the application by means of an Interview Summary Form completed by the examiner and placed in the file wrapper. M.P.E.P. 713.04 (6th ed. 1995, rev. 2, July 1996). In addition, a complete written statement disclosing the substance presented at the interview must be filed by the applicant when reconsideration is requested in view of an interview with an examiner. 37 CFR 1.133(b) (1996). However, the examiner and applicant can agree that the Interview Summary Form satisfies applicant's obligation under Rule 133. M.P.E.P. 713.04.

A complete and accurate recordation of the substance of an examiner interview should include the following:

an identification of the claims and prior art discussed; a description of proposed amendments; the general thrust of the applicant's and examiner's arguments; and the results of the interview. *Id.* Although the recordation of the arguments presented at the interview need not be lengthy or highly detailed, the general nature of the principal arguments should be readily apparent. *Id.*

The PTO is interested in ensuring that complete and accurate file histories are created and maintained. Public comments are invited to assist the PTO in identifying any improvements that can be made to increase the clarity and completeness of prosecution histories. The tenor of the following questions should not be taken as an indication that the PTO has taken a position on or is predisposed to any particular approach to creating and maintaining complete and clear file histories.

1. Do you believe that the current rules and procedures pertinent to recording prosecution histories are sufficiently clear and effective? If not, please:

(a) identify aspects of the rules and procedures that you believe lack clarity or do not facilitate the creation of adequate records;

(b) identify any changes to the rules and procedures that you believe would improve the clarity and completeness of file histories; and

(c) discuss potential advantages and hardships that patent applicants and examiners would face if particular changes were adopted.

2. Do you believe that examiners are correctly and uniformly applying the existing rules and procedures governing the recording of file histories? If not, please:

(a) provide or summarize examples in which you believe examiners have not maintained complete file histories;

(b) identify additional steps that can be taken by the PTO and applicants to clarify the prosecution history; and

(c) discuss possible advantages and drawbacks to the proposed changes.

3. Do examiners generally notify applicants when an amendment fails to point out the patentable novelty of applicant's invention, as required by 37 CFR 1.111? If so, do you believe that examiners should continue to notify applicants of their failure to include a statement of novelty?

4. Is language such as ''to further define and clarify the invention'' sufficient to satisfy Rules 111 and 119 of 37 CFR which require the applicant to point out how each amendment distinguishes the claims over the cited prior art? If not, please explain why applicants should be required to recite positively the rationale behind every claim amendment.

5. Should examiners be required to recite positively the reasons for amendments to claims when claims are amended by way of a formal examiner's amendment drafted pursuant to M.P.E.P. 1302.04? If so, do you believe this would discourage the practice of examiner amendments? Also, what effect would such a requirement have on the patent prosecution process?

6. Should the current practice of having examiners prepare reasons for allowance, as outlined in 37 CFR 1.109, be discontinued? If so, please explain why you believe this is desirable. If not, should 37 CFR 1.109 be amended to make it mandatory that reasons for allowance must be provided by the examiner? (Currently, according to 37 CFR 109, setting forth reasons for allowance is not mandatory on the examiner's part.) If so, in which of the following instances should examiners be required to set forth reasons for allowance:

(a) in allowable patent applications; or

(b) when the record, as a whole, is unclear as to why the patent application is being allowed.

7. Do reasons for allowance recorded by examiners contain accurate and precise interpretations regarding the novelty or nonobviouseness of the claims?

If not, please:

(a) explain the experiences you have had that led you to your conclusions; and

(b) identify what you believe should be included in or omitted from an examiner's reasons for allowance.

8. What would prompt an applicant to comment on an examiner's statement of reasons for allowance?

9. If an applicant disagrees with an examiner's reasons for allowance, should applicant be obligated to respond? If so, should applicant's failure to file a statement commenting on the examiner's reasons for allowance be deemed an admission that applicant acquiesces to the reasoning of the examiner? (Currently, pursuant to 37 CFR 1.109, failure to comment on the reasons for allowance does not imply that the patent applicant agrees with the reasoning of the examiner.)

10. Is the current practice of placing applicant's comments to reasons for allowance in the application file without further comment by the examiner adequate? If not, how and why should the current practice be changed?

11. Does the present system of recording examiner interviews by means of interview summary records, as outlined in M.P.E.P. 713.04, provide a complete record of the substance of the interview? If not, please:

(a) explain the experiences you have had that have led you to your conclusions; and

(b) describe additional changes to the interview summary practice you believe would be desirable.

12. Should applicants be obligated to record the substance of every examiner interview, regardless of whether reconsideration is sought?

13. Should an examiner and applicant be permitted to agree that a written record of the substance of an interview by the applicant is not necessary?

14. Should the PTO require that telephonic and/or personal interviews between examiners, applicants and attorneys be taped by electronic devices and transcribed into a written medium to be included in the file wrapper? If so, please:

(a) identify which type of interviews should be recorded by electronic devices;

(b) indicate whether transactions should be distributed to applicants;

(c) explain how this should be implemented;

(d) identify who should bear the cost; and

(e) discuss potential advantages and drawbacks to electronic recording of examiner interviews.

In the alternative, should applicants be permitted to request recording of examiner interviews by electronic devices? If so, please:

(a) identify which type of interviews applicants should be permitted to request recording;

(b) indicate whether transcriptions should be distributed to applicants;

(c) explain how this should be implemented;

(d) identify who should bear the cost; and

(e) discuss potential advantages and drawbacks to applicant-requested electronic recording of examiner interviews.

B. Other Issues

Parties may address related matters not specifically identified in the above topics. If this is done, parties are requested to:

1. Label that portion of their responses as ''Other Issues'';

2. Clearly identify the matter being addressed;

3. Provide examples, when appropriate, that illustrate the matter addressed;

4. Identify any relevant legal authorities applicable to the matter being addressed; and

5. Provide suggestions regarding how the matter should be addressed by the PTO.

III. Guidelines for Oral Testimony

Individuals wishing to testify must adhere to the following guidelines:

1. Anyone wishing to testify at the hearings must request an opportunity to do so no later than November 3, 1997. Requests to testify may be accepted on the date of the hearing if sufficient time is available on the schedule. No one will be permitted to testify without prior approval.

2. Requests to testify must include the speaker's name, affiliation and title, mailing address, and telephone number. Facsimile number and Internet mail address, if available, should also be provided. Parties may include in their request an indication as to whether the party wishes to testify during the morning or afternoon session of the hearing.

3. Speakers will be provided between five and fifteen minutes to present their remarks. The exact amount of time allocated per speaker will be determined after the final number of parties testifying has been determined. All efforts will be made to accommodate requests for additional time for testimony presented before the day of the hearing.

4. Speakers may provide a written copy of their testimony for inclusion in the record of the proceedings. These remarks should be provided no later than November 25, 1997.

5. Speakers must adhere to guidelines established for testimony. These guidelines will be provided to all speakers on or before November 11, 1997. A schedule providing approximate times for testimony will be provided to all speakers the morning of the day of the hearing. Speakers are advised that the schedule for testimony will be subject to change during the course of the hearings.

IV. Guidelines for Written Comments

Written comments should include the following information:

1. Name and affiliation of the individual responding;

2. If applicable, an indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views; and

3. If applicable, information on the respondent's organization, including the type of organization (e.g., business, trade group, university, or non-profit organization) and respondent's position, including type of experience (e.g., attorney handling prosecution and/or patent litigation, patent agent prosecuting patent applications, or judge deciding patent issues).

If possible, parties offering testimony or written comments should provide their comments in machine-readable format. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5'' floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Machine-readable submissions should be provided as unformatted text (e.g., ASCII or plain text), or as formatted text in one of the following file formats: Microsoft Word (Macintosh, DOS, or Windows versions) or WordPerfect (Macintosh, DOS, or Windows versions).

Information that is provided pursuant to this notice will be made part of a public record and may be available via the Internet. In view of this, parties should not provide information that they do not wish to be publicly disclosed or made electronically accessible. Parties who would like to rely on confidential information to illustrate a point are requested to summarize or otherwise provide the information in a way that will permit its public disclosure.

Dated: September 16, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–25068 Filed 9–19–97; 8:45 am]

BILLING CODE 3510–16–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Futures Contracts in Corn and Soybeans; Proposed Order To Change and To Supplement Proposal

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of, and Request for Public Comment on, Proposed Order to Chicago Board of Trade to Change and to Supplement Chicago Board of Trade Proposal on Delivery Specifications.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') has issued a Proposed Order to the Board of Trade of the City of Chicago (''CBT''), under Section 5a(a)(10) of the Commodity Exchange Act (''Act''), 7 U.S.C. 7a(a)(10), to Change and to Supplement its Proposal regarding the delivery terms of the CBT corn and soybean futures contracts. The CBT proposal was submitted in response to a December 19, 1996, notification to the CBT by the Commission that the CBT corn and soybean futures contracts no longer accomplish the objectives of that section of the Act. The Commission in its Proposed Order, proposes to change and to supplement the CBT proposal for its soybean futures contract by: i) retaining the Toledo, Ohio, switching district as a delivery location; ii) retaining St. Louis-East St. Louis-Alton as a delivery location for shipping stations; and iii) making soybeans from the Toledo delivery location deliverable at contract price and from all other locations at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price. The Commission, with respect to the CBT corn contract, is proposing to make corn from shipping locations on the northern Illinois River deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price. With respect to both the CBT corn and soybean futures contracts, the Commission also proposes to change and to supplement the proposed contingency plan for alternative delivery procedures when traffic on the northern Illinois River is obstructed and to eliminate the $40 million minimum net worth eligibility requirement for issuers of shipping certificates. Finally, the Commission is proposing to disapprove the proposed terms of the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts and is proposing to apply the changes and supplements described above to such contracts under sections 5a(a)(10), 5a(a)(12), and 8a(7) of the Act.

The Commission has determined that publication of the Proposed Order for public comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comment must be received by October 22, 1997.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to ''Proposed Order—Corn and Soybean Delivery Points.''

FOR FURTHER INFORMATION CONTACT: John Mielke, Acting Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, Mr. Architzel at [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION: Section 5a(a)(10) of the Act provides that as a condition of contract market designation, boards of trade are required to:

Permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contact market within seventy-five days fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *.

The Commission, on September 15, 1997, issued a Proposed Order under section 5a(a)(10) of the Act to change and to supplement the proposal of the CBT relating to the delivery specifications of the corn and soybean futures contracts. That proposal was submitted in response to prior Commission notification to the CBT that its futures contracts for corn and soybeans no longer were in compliance with the requirements of section 5a(a)(10) of the Act. The text of the Proposed Order is set forth below.

In the Matter of the Section 5a(a)(10) Notification to the Board of Trade of the City of Chicago, Dated December 19, 1996, Regarding Delivery Point Specifications of the Corn and Soybean Futures Contracts.

Dated: September 15, 1997.

Proposed Order of the Commodity Futures Trading Commission to Change and to Supplement Proposed Rules of the Board of Trade of the City of Chicago, Submitted for Commission Approval in Response to a Section 5a(a)(10) Notice Relating to Futures Contracts in Corn and Soybeans.

The Commodity Futures Trading Commission (CFTC or Commission) hereby:

(1) proposes under section 5a(a)(10) of the Commodity Exchange Act (Act) to change and to supplement the proposed delivery specifications of the Board of Trade of the City of Chicago (CBT) soybean futures contract by making all changes to such rules and regulations as required to effect the following:

i. retaining the Toledo, Ohio, switching district as a delivery location;

ii. retaining St. Louis-East St. Louis-Alton as a delivery location for shipping stations; and

iii. making soybeans from the Toledo delivery location deliverable at contract price and making soybeans from shipping locations within the St. Louis-East St. Louis-Alton and the northern Illinois River delivery locations deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price;

(2) proposes under section 5a(a)(10) of the Act to change and to supplement the proposed delivery specifications of the CBT corn futures contract by making all changes to such rules and regulations as required to make corn from shipping locations on the northern Illinois River deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price;

(3) proposes under section 5a(a)(10) of the Act to change and to supplement the proposed CBT contingency plan for alternative delivery when river traffic is obstructed by reducing the continuous period of lock closure which triggers application of the plan's special procedures from the 45 days proposed to 15 days, by eliminating the condition which triggers the contingency plan that notice of the lock closure must have been given six-months prior to such closure, by making the contingency plan applicable whenever a majority of shipping stations within the northern Illinois River delivery area are affected by closure of any lock or locks and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent.

(4) proposes under sections 5a(a)(10) and 15 of the Act to change and to supplement the proposed CBT corn and soybean futures contracts by eliminating the $40 million minimum net worth eligibility requirement for issuers of shipping certificates; and

(5) proposes to disapprove under sections 5a(a)(10), 5a(a)(12), and 15 of the Act and Commission rule 1.41(b) the terms of the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts and proposes to apply the changes and supplements described above to such contracts under sections 5a(a)(10), 5a(a)(12), and 8a(7).

The complete text of the revisions proposed by the Commission to the proposed CBT rules appears in attachment 1 of this Order.

The Commission, as detailed below, bases these proposed actions on its finding that the response of the CBT to the section 5a(a)(10) notification relating to its corn and soybean futures contracts does not meet the requirements, or accomplish the statutory objectives, of that section and also violates section 15 of the Act. The Commission's determination is based upon: (1) the inadequate amount of deliverable supplies of soybeans available under the proposed contract terms in the delivery area as proposed; (2) the failure of the proposed corn and soybean contracts to include necessary locational differentials; (3) the failure of the proposed corn and soybean contracts to provide an adequate rule for alternative deliveries if river transportation is obstructed; and (4) the substantial impediment to eligibility for issuing corn and soybean shipping certificates imposed by the $40 million net worth requirement.

Specifically, under the CBT proposal, the amount of deliverable supplies of soybeans during the critical summer delivery months of July, August, and September fails to meet the minimum level that, in the opinion of the Commission, is necessary to tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of soybeans in interstate commerce. The gross amount of potentially deliverable supplies historically has failed to reach the minimum level on a significant number of occasions during the past 11 years the Commission has examined. Moreover, on those occasions when the gross amount of potentially deliverable supplies did exceed that minimum level, it frequently did so only because of supplies available at the Chicago/Burns Harbor (Chicago) delivery point, the continuing decline of which precipitated the section 5a(a)(10) notification in the first instance. This inadequacy is further heightened when appropriate downward adjustments are made to reflect only that portion of the gross deliverable supply which would likely be available for futures deliveries. Thus, gross deliverable supplies would be diminished by the effects of the proposed three-day barge queuing rule, prior commercial commitments of available stocks, the lack of locational price differentials, and the unjustifiably high financial eligibility requirements. The frequent interruptions in barge transportation on the northern Illinois River due to lock closings and weather conditions also create foreseeable disruptions to deliverable supplies under the CBT proposal. The inadequacy of deliverable supplies of soybeans under the CBT proposal requires the retention of the CBT's current delivery points at Toledo and St. Louis, where additional deliverable supplies would be available.

The Commission does not find that available deliverable supplies of corn under the CBT's proposal are inadequate under section 5a(a)(10) so as to require additional delivery points. However, the adequacy of corn supplies cannot be accurately and fully ascertained until after there is a history of deliveries occurring under the proposal. To the extent that in operation the proposal results in inadequate deliverable supplies of corn, the Commission will reconsider the need to require additional delivery points for the corn contract. To that end, the Commission directs the CBT to report on the experience with deliveries and expiration performance in the corn futures contract on an annual basis for a five-year period after contract expirations begin under the revised contract terms.

Neither the CBT proposal for soybeans nor its proposal for corn provides for locational price differentials among spatially separated delivery points, as section 5a(a)(10) of the Act requires. In addition to tending to reduce deliverable supplies, the lack of locational price differentials reflecting the differentials in the underlying cash markets for corn and soybeans would render the futures contracts susceptible to price manipulation, market congestion, and the abnormal movement of the commodities in interstate commerce.[1]

In addition, the proposed contingency plan providing for alternative delivery procedures when river traffic is obstructed violates the provisions of section 5a(a)(10). By requiring lengthy advance notice of a river obstruction before the contingency plan applies, by limiting the contingency plan only to instances of river obstructions south of the delivery area, and by specifying a differential that does not conform to the differential proposed by the Commission, the proposed plan fails to diminish the potential for price manipulation, market congestion, or the abnormal movement of the commodities in interstate commerce.

Finally, in addition to its likely detrimental effect on the amount of available deliverable supplies on the contracts, the proposed $40 million net worth eligibility requirement for issuers of shipping certificates poses a significant, unnecessary, and unjustified barrier to entry to those wishing to participate as issuers of shipping certificates on the contracts in violation of section 15 of the Act. This proposed $40 million net worth requirement is in addition to other minimum financial requirements that shipping certificate issuers must meet, including minimum working capital of $2 million, a bond or other financial guarantee equal to the full market value of all outstanding shipping certificates, and a limitation on the value of outstanding certificates an issuer may issue to 25 percent of the issuer's net worth. These requirements are fully adequate to ensure the financial ability of issuers to perform their responsibilities under the contracts. The burden imposed by the additional $40 million net worth requirement on those otherwise eligible to participate in the contract as shipping certificate issuers would not only be unnecessary, but would act as a significant barrier to participation as an issuer and would preserve a high level of concentration among issuers.

Accordingly, as provided under section 5a(a)(10) of the Act, the Commission hereby notifies the CBT that it will have an opportunity to be heard on this proposed Order by the Commission. To that end, the Commission will convene a public hearing at its Washington, D.C., office, on October 15, 1997, beginning at 1:00 p.m. (or at an earlier date if the CBT requests), in order to provide the CBT with an opportunity to appear before the Commission to make an oral presentation regarding the matters raised in this proposed Order. The Commission will also accept written comments from the CBT on the proposed Order on or before the date of the hearing.

The Commission's conclusions, as discussed in greater detail below, are supported by factual analyses made by the CFTC staff and by a large number of well-informed written comments submitted to the Commission by commercial users of the corn and soybean futures contracts and by other interested persons. The Commission also analyzed the documentary evidence submitted by the CBT and other commenters in support of the CBT proposal. In addition, the CBT and other interested members of the public presented oral and written comments to the Commission during an open meeting of the Commission. Written and oral comments received were reviewed by the Commission and were considered by the Commission in arriving at its conclusions.

I. The Section 5a(a)(10) Proceeding

The Commission, by letter dated December 19, 1996, commenced this proceeding by issuing to the CBT a notification under section 5a(a)(10) of the Act finding that the delivery specifications of its corn and soybean futures contracts no longer accomplish the statutory objectives of ''permit[ting] the delivery of any commodity * * * at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.'' Letter of December 19, 1996, to Patrick Arbor from the Commission, 61 FR 67998 (December 26, 1996) (section 5a(a)(10) notification). The section 5a(a)(10) notification detailed long-term trends in the storage, transportation and processing of corn and soybeans, related those trends to changes in cash market conditions at the CBT delivery locations, and analyzed the lack of consistency between the cash market for these commodities and the delivery provisions of these contracts. *Id.*, 68000–68004.

The section 5a(a)(10) notification also recounted the CBT's failure over the last 25 years adequately to address these structural problems with the contracts. As noted in the section 5a(a)(10) notification, section 5a(a)(10) was itself expressly added to the Act in 1974 after a number of apparent manipulations and problem liquidations involving the CBT grain contracts. *Id*. 68005. In July 1989 an emergency action was required relating to CBT's soybean contract because of a commercial trader's holding of futures positions which exceeded the total amount of soybeans that could be delivered at the contract's delivery points. By 1991 several major

[1] The lack of locational price differentials not only violates section 5a(a)(10) of the Act, but also is contrary to Commission Guideline No. 1 and the Commission's policy on differentials. *See*, CFTC Guideline No. 1, 17 CFR part 5, appendix A; and Memorandum from Mark Powers, Chief Economist to the Commission, dated March 22, 1977, (1977), adopted by the Commission at its meeting of May 3, 1977.

studies had been completed demonstrating the inadequacy of the CBT's delivery points. Nevertheless, the CBT's response to these problems was limited. *Id.* 68006. As the Commission noted in the section 5a(a)(10) notification, when in 1992 it approved certain changes proposed by the CBT to address these problems, the Commission cautioned that the CBT's response was merely a short-term palliative, and the Commission urged the CBT to consider actively more significant contract changes. *Id.* 68007.

Only three years later, three of the existing six Chicago warehouses regular for delivery ceased operations, a symptom of the serious, fundamental problems with the contracts' delivery specifications. At the urging of the Commission, the CBT formed a special task force to address the delivery problems. That task force took a year developing proposed changes to the contracts' specifications which were modified by the CBT's board of directors. The modified proposal was then defeated by a vote of the CBT membership on October 17, 1996.

Subsequently, on December 19, 1996, after an additional Chicago delivery warehouse stopped accepting soybeans and corn in late October 1996, the Commission formally commenced this proceeding under section 5a(a)(10) of the Act. The section 5a(a)(10) notification found that the CBT corn and soybean futures contracts no longer met the requirements of that section of the Act and notified the CBT that it had until March 4, 1997, the statutory period of 75 days, to submit for Commission approval proposed amendments to the contracts' delivery specifications to bring them into compliance with the Act. Neither the CBT nor the nearly 700 comments filed with the Commission regarding the CBT proposal have challenged the factual basis for the December notification, and indeed, both the CBT and many commenters have acknowledged the correctness of that Commission action.

The CBT, on April 16, 1997, submitted its response to the section 5a(a)(10) notification in the form of proposed exchange rule amendments.[2] Previously, the Commission had published the substance of the proposed amendments in the **Federal Register** for a 15-day comment period.[3] 62 FR 12156 (March 14, 1997). In response to requests for additional time to comment on the proposal, the Commission on April 24, 1997, extended the comment period until June 16, 1997. 62 FR 1992.[4]

The CBT requested the opportunity to appear before the Commission ''to address issues that have been generated during the comment period.'' [5] The Commission granted the CBT's request (62 FR 29107 (May 29, 1997)), holding a public meeting on June 12, 1997, to accept oral and written statements by the CBT and interested members of the public. The participants represented a cross-section of views, both favoring and opposing the CBT proposal.[6]

II. The CBT Proposal Responding to the Section 5a(a)(10) Notification

In correspondence dated April 16, 1997, the CBT responded to the section 5a(a)(10) notification by submitting proposed amendments to the terms and conditions of its corn and soybean futures contracts for Commission review. The data submitted by the CBT to justify its proposal were inadequate to permit a determination of whether the proposal met the requirements of section 5a(a)(10) of the Act and contained certain flaws.[7] Therefore, the Commission was required independently to collect and to analyze the data necessary for a proper analysis of the CBT's proposal. The CBT supplemented its original submission on more than one occasion—most recently on August 25, 1997.

The CBT's proposal would replace the existing delivery system involving delivery of warehouse receipts representing stocks of grain in store at terminal elevators in Chicago, Toledo, and St. Louis with delivery of shipping certificates.[8] The shipping certificates would provide for corn or soybeans to be loaded into a barge at a shipping station located along a 153-mile segment of the Illinois River from Chicago (including Burns Harbor, Indiana) to Pekin, Illinois. Delivery in Chicago would also be permitted by rail or vessel. Delivery at all eligible locations would be at par. (See map below.)

In addition to being located along the defined segment of the Illinois River

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[2] While the CBT labeled its submission of the proposed rule amendments as having been made pursuant to section 5a(a)(12), as well as section 5a(a)(10), of the Act, the Commission is applying its specific authority and procedures set forth in section 5a(a)(10) with regard to its consideration of the CBT's submission.

Section 5a(a)(12) of the Act provides that ''the Commission shall disapprove after appropriate notice and opportunity for hearing any such rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission.'' In addition, section 8a(7) of the Act empowers the Commission to alter or to supplement exchange rules as necessary or appropriate ''to insure fair dealing in commodities traded for future delivery on such contract market.'' Such changes or alterations may address contract terms or conditions, among other matters.

The Commission is exercising its authority under section 5a(a)(10) of the Act to change and to supplement the CBT proposals. Nevertheless, the Commission, for the reasons detailed below, necessarily also finds that the CBT proposal must be disapproved under section 5a(a)(12) of the Act as being inconsistent with the requirements of sections 5a(a)(10), 8a(7) and 15 of the Act and must be altered and supplemented under section 8a(7) of the Act.

[3] On March 4, 1997, the CBT had notified the Commission that its Board had authorized the submission of the proposed amendments to the CBT membership for a formal vote. On April 15, 1997, the CBT membership voted in favor of the proposed amendments, and the CBT formally submitted them for Commission review the next day.

[4] Also on April 24, 1997, the CBT informed the Commission by letter that it would the next day list, or relist, for trading the July and December 1999 corn futures contract months and the July and November 1999 soybean futures contract months. By letter dated May 2, 1997, the Commission notified the CBT that the listing or relisting of these contract months ''is not legally authorized at the present time,'' that the Commission ''reserves all of its authority under sections 5a(a)(10), 5a(a)(12) and 8a(7) of the Act to approve, disapprove, supplement, or modify the proposed delivery specifications of the CBT corn and soybeans futures contract and to apply that determination to the[se] * * * trading months,'' and that the CBT ''must notify all market participants that the Commission has not approved the listing of these contract months.''

[5] The Commission received close to 700 comments on the CBT's proposal, the largest number of comments ever received by the Commission on any issue before it. The vast majority of the comments were opposed to the CBT proposal for a variety of reasons. Many of the comments were well reasoned and contained valuable factual information and data which were important supplements to the information provided by the CBT in its submission.

[6] Both written and oral statements in connection with the meeting were submitted to the Commission for inclusion in the record and, along with a transcription of the meeting, have been entered into the Commission's comment file. Participants included a United States Senator from the State of Ohio (transcript at 69–75) and United States Representatives from the States of Michigan (transcript at 9–14) and Ohio (transcript at 14–26); representatives of six commercial users of the contracts (transcript at 116–168); and representatives of three producer associations (transcript at 169–183). The CBT presented its views through the statements of six persons (transcript at 27–29, 36–69).

[7] In this regard, the Act, Guideline No. 1, and Commission rule 1.41 provide that the Exchange must demonstrate that its proposed rule amendments meet the requirements of the law. When exchange submissions fail to provide sufficient information to permit the Commission to make a determination, the Commission can refuse to consider a proposed amendment and can remit the proposed rule for further justification. *See,* 17 CFR 1.41(b). However, in this case the Commission chose to supplement the CBT submission with its own research and to act on the CBT proposal.

[8] A shipping certificate is a negotiable instrument that represents a commitment by the issuer to deliver (i.e., load into a barge) corn or soybeans to the certificate holder, pursuant to terms specified by the CBT, whenever the holder decides to surrender the certificate to the issuer. Unlike an issuer of a corn or soybean warehouse receipt, which must have the product in storage to back the receipt, an issuer of a shipping certificate would be able to honor its delivery obligation not only from inventories, but also from anticipated receipts or purchases of corn or soybeans after the holder surrenders the certificate.

and capable of loading barges, firms eligible to issue shipping certificates would be required to meet a minimum net worth standard of $40 million. This minimum net worth standard is not applicable to the CBT's other agricultural futures contracts and would be in addition to the CBT's existing requirement of $2 million working capital required of firms regular for delivery of all agricultural products. The proposal also would require the issuer to have a letter of credit or other guaranteed credit instrument collateralizing the full market value of the issued certificates and would establish limits on the amount of outstanding shipping certificates by firm.[9] In addition, the proposal would impose requirements regarding an issuer's rate of loading barges.[10] Once a shipping certificate has been surrendered to the issuer, the issuer would have to begin loading product within three business days of surrender and receipt of loading orders or one business day after placement of the certificate holder's barge, whichever is later. This loading would be required to take precedence over all other barge loadings for eight hours per day at the issuer's loading facility.

Shipping certificate holders would be required to pay shipping certificate issuers a daily premium charge until the certificate is surrendered.[11] The last trading day for expiring corn and soybean futures months would be the business day preceding the 15th calendar day of the delivery month, with all deliveries of shipping certificates required to be completed by the second business day following the last trading day. Currently, the last trading day is the eighth-to-last business day of the delivery month, with futures delivery of warehouse receipts continuing through the end of the month.

The CBT's proposal would eliminate the current delivery points on its corn and soybean futures contracts at Toledo, Ohio, and St. Louis, Missouri.

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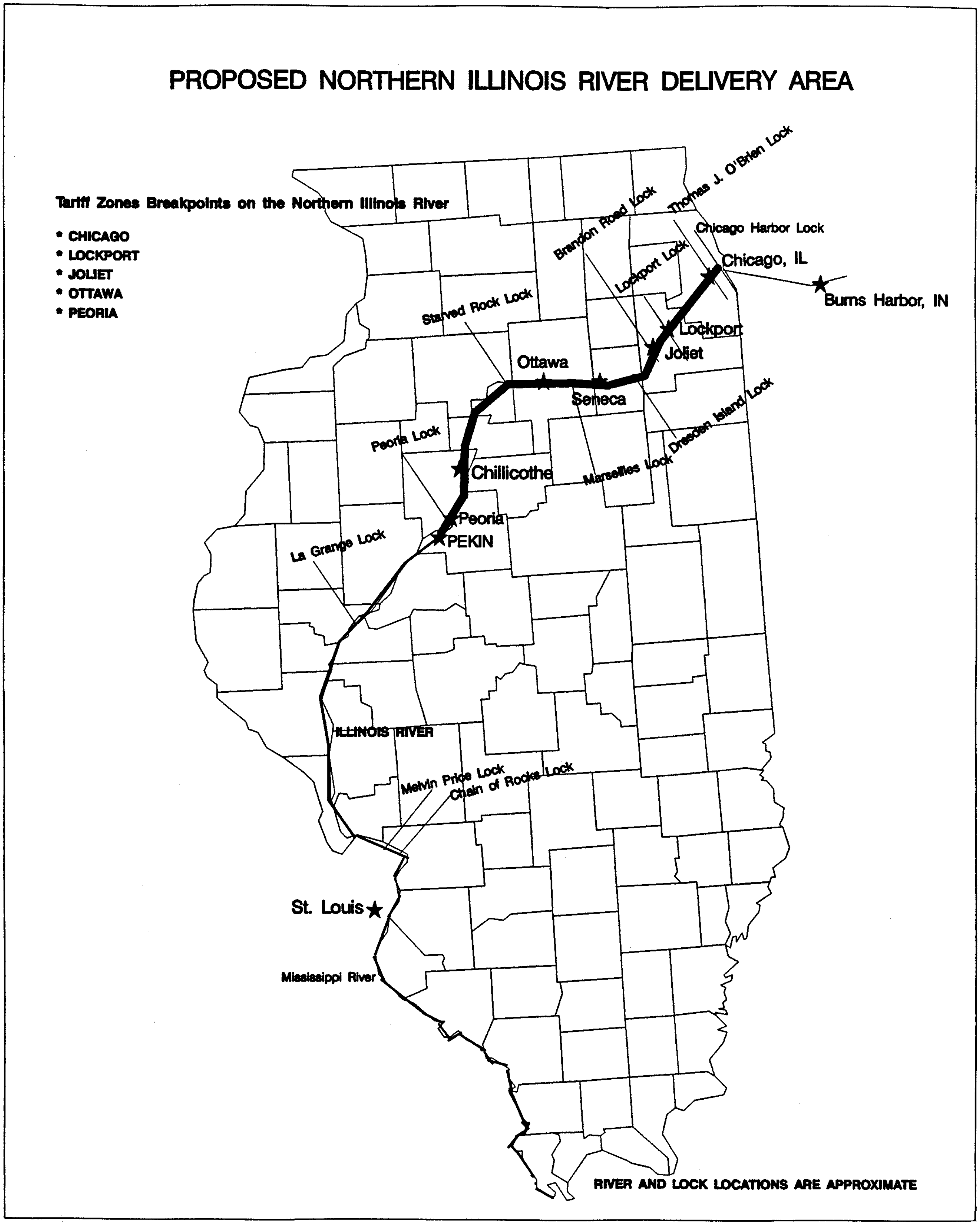
[9] These limitations are: (a) for northern Illinois River locations, 30 times the registered daily barge loading rate; (b) a value no greater than 25% of the operator's net worth; and (c) for Chicago and Burns Harbor locations only, the registered storage capacity of the facility.

[10] The issuer's registered daily rate of loading shall be not less than (a) for northern Illinois River locations, one barge per day per shipping station and (b) for Chicago and Burns Harbor locations only, three barges per day per shipping station.

[11] This charge is 12/100 of one cent per bushel for Chicago and 10/100 of one cent per bushel for issuers along the northern Illinois River.



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III. Deliverable Supplies of Soybeans Are Inadequate Under Section 5a(a)(10)

A. The Standard for Measuring Adequacy of Deliverable Supplies

Pursuant to section 5a(a)(10), the Commission must assess whether the CBT proposal meets the standard set by that section to ''permit the delivery * * * at such point or points and at such * * * locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.''

One criterion for whether a delivery proposal meets the standards of section 5a(a)(10) is whether the available deliverable supplies of the commodity at the delivery points specified are adequate to prevent manipulation, market congestion, and the abnormal movement of the commodity in interstate commerce. As discussed below, other aspects of a proposed futures contract may violate section 5a(a)(10) by tending to cause the prohibited results, but adequate deliverable supplies are a *sine qua non* for any contract under section 5a(a)(10).

The Commission believes that, to meet the statutory requirement of tending to prevent manipulation, market congestion, or the abnormal movement of a commodity in interstate commerce, a futures contract should have a deliverable supply that, for all delivery months on the contract, is sufficiently large and available to market participants that futures deliveries, or the credible threat thereof, can assure an appropriate convergence of cash and futures prices. To prevent unwarranted distortion of futures prices in relation to the cash market, the futures contract's delivery terms must reflect a product—in quality, form, location, mode of transportation, etc.—that is readily saleable in the cash market.

Commission Guideline No. 1 (17 CFR part 5, appendix A) provides some guidance with respect to the adequacy of the delivery terms of a futures contract. Guideline No. 1 requires that exchanges provide justification concerning significant contract terms—particularly delivery provisions—for new or amended futures contracts. This justification should provide evidence that the proposed contract terms and conditions are in conformity with practices in the underlying cash market, that those terms and conditions will provide for a deliverable supply that will not be conducive to price manipulation or distortion, and that such a supply reasonably can be expected to be available to the short trader and saleable by the long trader at its market value in normal cash market channels.

Judging the adequacy of deliverable supply in the context of a section 5a(a)(10) proceeding is more important than and significantly different from determining adequacy in the routine review of applications for new contract market designations. This section 5a(a)(10) proceeding involves contracts that are known to have very large and well-established markets, a history of large trader positions, and a decades-long history of surveillance problems. Indeed, the Commission has already made an affirmative and unchallenged finding that the delivery provisions of the current contracts violate the terms of section 5a(a)(10) of the Act, and the issue before it is whether the CBT's proposal goes far enough to cure the illegality of the contracts.

To determine an appropriate standard for measuring the adequacy of deliverable supplies under the CBT proposal, the Commission has examined separately for corn and soybeans the relationship between the level of deliverable stocks and the presence of a price premium for the expiring futures month over the next futures month (a price inverse). The presence of such a premium is an indication of tight deliverable supplies, potentially creating a price distortion. In situations where limited deliverable supplies lead to such a price inverse, futures contracts are significantly vulnerable to price manipulation, market congestion, and the abnormal movement of the commodity in interstate commerce under the terms of section 5a(a)(10).

For soybeans, the Commission's staff analysis demonstrated a consistent positive relationship between price inverses and deliverable stocks of less than 12 million bushels (2,400 contracts). Price inversions occurred in ten of the 15 expirations when deliverable stocks were less than 12 million bushels. This level of deliverable stocks constitutes four times the speculative position limit for the contract (2,400 contracts), a benchmark historically used by the Commission's staff in analyzing deliverable supplies for new contracts.[12]

The analysis for the corn market found a comparable relationship between price inverses and deliverable supplies at the stock level of 15 million bushels (3,000 contracts). Price inverses occurred in seven of the ten corn expirations when deliverable stocks were less than 3,000 contracts.[13] This analysis supports using as a measure of an inadequate level of deliverable supplies under section 5a(a)(10) a level below 12 million bushels (2,400 contracts) for soybeans and below 15 million bushels (3,000 contracts) for corn.

However, the history of these contracts may demonstrate that a higher level of supplies is, in fact, necessary to protect against manipulation. In particular, an additional measure would be based on historic experience with manipulation and price distortion in these contracts. During the July 1989 soybean expiration, the Commission exercised its surveillance powers to force the reduction of the long futures position of the Ferruzzi group of companies, and the CBT declared a market emergency and ordered the phased reduction of all positions above a specified size. Both the Commission and the CBT believed that the position of the Ferruzzi group posed a significant threat of manipulation and acted on that belief.[14] Just prior to the CBT emergency action, Ferruzzi's long position in the July 1989 soybean future was about 20 million bushels (4,000 contracts). To avoid a repetition of such a situation, deliverable supplies of at least 4,000 contracts would be necessary.

In its analysis of the adequacy of the deliverable supplies under the CBT proposal, the Commission has considered both of these measures, as well as other relevant information.

B. The CBT Submission Does Not Demonstrate That Its Proposal Meets the Statutory Standard of Adequate Deliverable Supplies

The CBT has failed to provide data that demonstrates the adequacy of available deliverable supplies. It supports its proposal by general statements about production and transactions in the cash markets in the vicinity of the delivery area, contending, for example, that its proposed delivery area

[12] The size of the largest long position in an expiring futures contract was also found to be associated with price inverses when deliverable stocks were less than 2,400 contracts. Of the five expirations in which the largest long position was 600 contracts or less, price inverses occurred only once. However, for the ten expirations in which the largest long position exceeded 600 contracts, inversions occurred nine times. At higher stock levels—that is, above the 2,400-contract level for soybeans—that relationship between position size and price inverses was not observed.

[13] In all seven expirations the largest long position exceeded 600 contracts.

[14] Although this incident involved soybean futures, it was recognized to have broader implications for CBT's grain contracts and led to an appraisal of the adequacy of the CBT's delivery terms generally for its wheat, corn, and soybean futures and to revisions to all three contracts.

* * * is located along more than 150 miles of the northern Illinois River, which is one of the world's largest and most active cash grain markets, handling over 500 million bushels of corn and soybeans per year. It substantially increases the supply of grain eligible for delivery on our futures contracts over the current delivery system, thereby minimizing the potential for price distortions and manipulation.

CBT July 1, 1997, submission, p. 2–2.

Data concerning corn and soybean production and handling in the areas near the delivery points are not an adequate measure of deliverable supplies under the contracts in light of the CBT proposal's heavy reliance on barge delivery along the northern Illinois River which involves product primarily destined for the export market. Most production and handling of corn and soybeans in the vicinity of the delivery points historically have involved product destined for the domestic market, and only a portion of that product has traditionally been loaded on barges as provided in the CBT proposal. Therefore, the proper measure of available supplies must be based on barge shipment data. To rely on additional supplies currently destined for the domestic market would be to assume that the futures contract would divert those supplies to the export market, thus causing an abnormal movement in interstate commerce forbidden by section 5a(a)(10).

The CBT argues that the supplies available for delivery along the northern Illinois River are adequate by citing the delivery capacity of firms along the river. The CBT states that there are seven firms with a cumulative daily barge loading capacity of 5.5 million bushels of grain and a 30-day loading capacity of 171.8 million bushels of grain.[15] (CBT April 16, 1997, submission at attachment 4.)

The CBT's reliance on the loading capacity of firms in the delivery area as an indicator of adequacy of deliverable supply is misplaced. As the unused delivery capacity in Chicago clearly demonstrates, delivery capacity bears little relation to the amount of deliverable supplies actually available at a particular location. The CBT's capacity measure, which is based on its proposed maximum limits on the shipping station's ability to issue shipping certificates (30 times a station's daily (8-hour) loading capacity), far exceeds the highest observed level of actual combined monthly corn and soybean barge shipments at the delivery points during the 11-year period studied, 1986 through 1996.

Moreover, the CBT overstated the loading capacity related to the contracts by including the capacity of three firms that would not meet contract requirements, particularly the $40 million net worth requirement, to qualify as shipping certificate issuers under the contracts. In doing so, it also significantly understated the level of concentration of the proposed delivery system and ignored the exclusionary effect of its $40 million net worth requirement.

The CBT, in its submission, also provided inflated data on barge shipments. These data significantly overstated the amount of barge shipments by including shipments from a certain part of the Illinois River outside of the defined delivery area of the contracts. CBT's data also included barge shipments by all shippers, including those not meeting the eligibility requirements to be issuers of certificates under the contracts and thus overstated the deliverable amounts available in that respect as well.

C. The CBT Proposal Fails to Meet the Minimum Threshold for Deliverable Supply for Soybeans

1. Methodology. The Commission staff compiled an extensive amount of data from which the Commission could estimate deliverable supplies. These data were assembled from information supplied by the United States Department of Agriculture (USDA), the Army Corps of Engineers, the Coast Guard, grain merchants, and the CBT.

The CBT proposal provides for delivery from Chicago by rail, vessel, and barge and along the northern Illinois River by barge. The contracts are essentially reflections of the export market for corn and soybeans, since the vast majority of corn and soybeans loaded on vessels and barges at Chicago and on barges along the northern Illinois River are destined for export markets. While Chicago rail shipments may play some role in the domestic market, that role has diminished so as to be very small.

The northern Illinois River's potentially available deliverable stocks for each delivery month were estimated by summing barge shipments from relevant points on the northern Illinois River for that month and all subsequent months of the same crop year to and including September, which was assumed to be the end of the crop year.[16] Since the amount shipped during a given month and in each succeeding month of the crop year must have been in transit or in storage in some location tributary to the river at the beginning of the month, this summing procedure provides an estimate of the corn and soybean stocks available to the proposed delivery points at the beginning of each delivery month.[17]

Because these stocks reflect the quantity of soybeans and corn actually shipped via the northern Illinois River, they represent a reasonable and accurate historical estimate of the quantity of these commodities that were economically available to the proposed northern Illinois River delivery points at prevailing cash market price relationships. While other supplies of corn and soybeans are in the vicinity, they historically moved to other demand centers rather than for delivery into the export market by barge shipments. If the CBT contracts under the proposed delivery terms were to draw these supplies from their usual destinations in the domestic market to futures deliveries, an abnormal movement in interstate commerce would occur. Therefore, such other supplies should not be considered in determining the adequacy of potentially available deliverable supplies.

[15] According to the CBT, the firms and their percentage share of loading capacity are: Archer Daniels Midland Co., 41 percent; Continental Grain Company, 23 percent; Cargill, Inc., 12 percent; Consolidated Grain and Barge, ten percent; Sours Grain Company, six percent; American Milling Company, six percent; and Garvey International, two percent. (CBT April 16, 1997, submission, attachment 14.)

[16] Corn and soybeans are both harvested beginning in September or October, the beginning of a new crop year. All deliveries of corn and soybeans throughout the year subsequent to harvest are made from stored supplies. These supplies are consumed over time, reaching their lowest level over the summer until the next harvest replenishes the supply.

[17] To account for the fact that a portion of the corn and soybeans shipped during September may include some new crop supplies that are not available earlier in the crop year, the estimated northern Illinois River deliverable stocks for delivery months preceding September were reduced in certain years to reflect the likelihood that part of the September shipments consisted of new crop supplies. The indicated reductions were made only in years where available USDA data on harvesting progress for crop-reporting districts in northern/central Illinois and Illinois production data by county indicated that significant quantities of corn and soybeans had been harvested in September. Deliverable supplies for all months of a given crop year prior to September were reduced by an amount equal to 50 percent of the September shipments (an amount suggested by trade sources) whenever the quantity of new crop supplies available in September in those counties within 25 miles of the proposed northern Illinois River and Chicago delivery area exceeded the quantity shipped during the month. The use of new crop supplies from counties within 25 miles of the revised delivery points was based on the assumption that most new crop supplies available early in the harvest period are likely to be moved to the delivery points by trucks moving relatively short distances from farms to avoid creating unnecessary delays in harvesting. In addition, trade sources indicated that most supplies that move to the proposed northern Illinois River delivery points are trucked from locations within 25 miles of these points.

For Chicago, potentially available deliverable supplies were estimated as the sum of stocks available at the beginning of each delivery month plus receipts of corn or soybeans during that month. Receipts were included because shipping certificates do not require the commodity to be in store at the delivery point. Thus, Chicago warehouse operators potentially could issue shipping certificates against stocks in store at the beginning of a delivery month and against actual and/or anticipated receipts of corn or soybeans as well.

These potentially available deliverable supply estimates were adjusted to reflect the effect of the proposed financial requirements on the number of firms that would be eligible to make delivery and, for Chicago, the proposed limits on the number of shipping certificates that could be issued by those firms. The proposal restricts eligibility of issuers of shipping certificates to firms meeting a $40 million net worth requirement. This eligibility requirement would eliminate barge shipments made by ineligible firms and likely would reduce deliverable supplies originating from the proposed northern Illinois River delivery area by an average of about five percent. However, it is possible that a portion of the supplies that normally are shipped by the three firms not meeting that eligibility requirement—although by no means all those supplies—would be made available for futures delivery by diversion of the supplies to the four eligible firms. Accordingly, the Commission calculated two separate estimates of potentially available deliverable supplies: one excluding shipments made by firms not eligible to issue shipping certificates on the contract and the second including such ineligible firms' shipments.

Another adjustment was made to reflect current capacity restraints. Because of the recent closure of four of the six elevators in Chicago, prior years' data for Chicago were adjusted to reflect current maximum capacity levels in that area.

Through this analysis, the Commission arrived at potentially available gross deliverable supplies, discussed below. As is also described in more detail below, those amounts must be reduced because of various additional factors limiting the available deliverable supplies.

2. Gross Deliverable Soybean Supplies. Delivery months under the CBT proposed soybean futures contract include July, August, and September, months which are at the end of the crop year and which therefore historically reflect the lowest available supplies. As shown in the following charts for soybeans attributable to the four firms which would be eligible to issue shipping certificates, gross deliverable supplies under the CBT proposal (Chicago supplies plus northern Illinois River supplies) for July, August, and September do not meet the minimum level considered by the Commission to be required by section 5a(a)(10) of the Act. Specifically, for July, the total deliverable supply of soybeans was less than the 2,400-contract level in four of the 11 years covered by the analysis, while the 4,000-contract level was not reached in six of the 11 years. For August, gross deliverable soybean supplies for the four eligible firms fell below 2,400 contracts in five years, and the 4,000-contract level was not reached in any of the 11 years. Soybean deliverable supplies for the four eligible firms in September were less than the 2,400-contract level in seven of the 11 years and did not reach the 4,000-contract level on any occasion.[18] As demonstrated in the following charts, Chicago supplies played a critically important role in almost all instances in which the 2,400-contract level was reached or exceeded.

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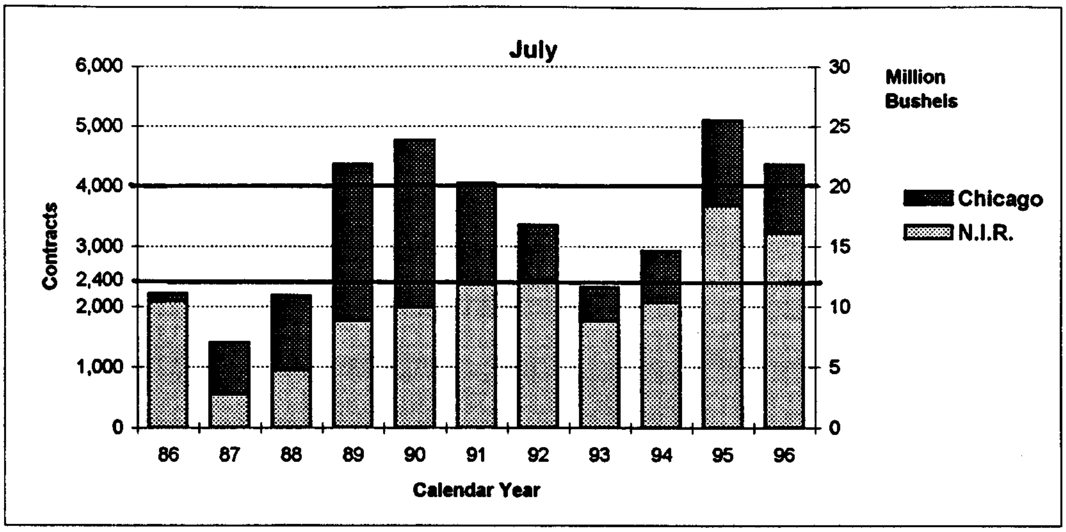
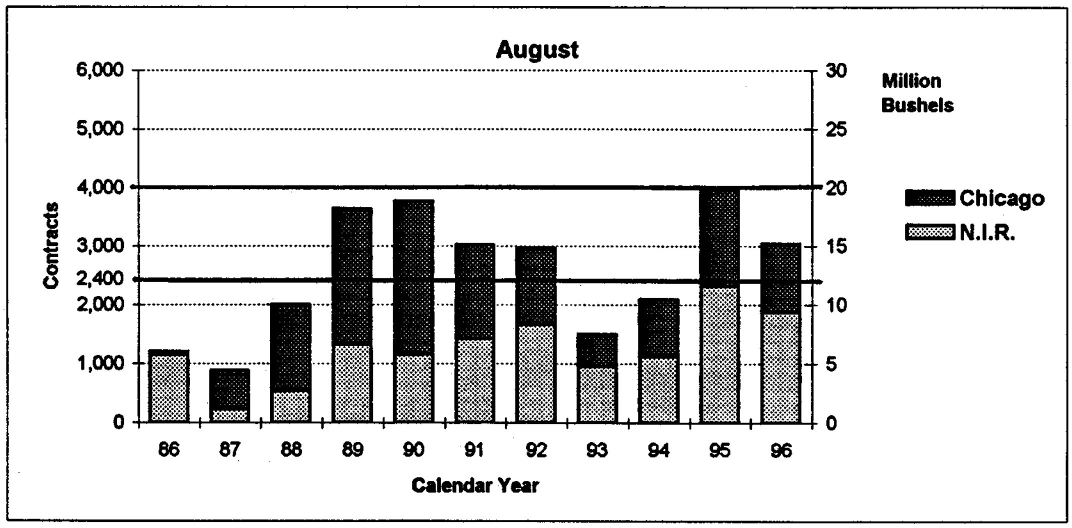
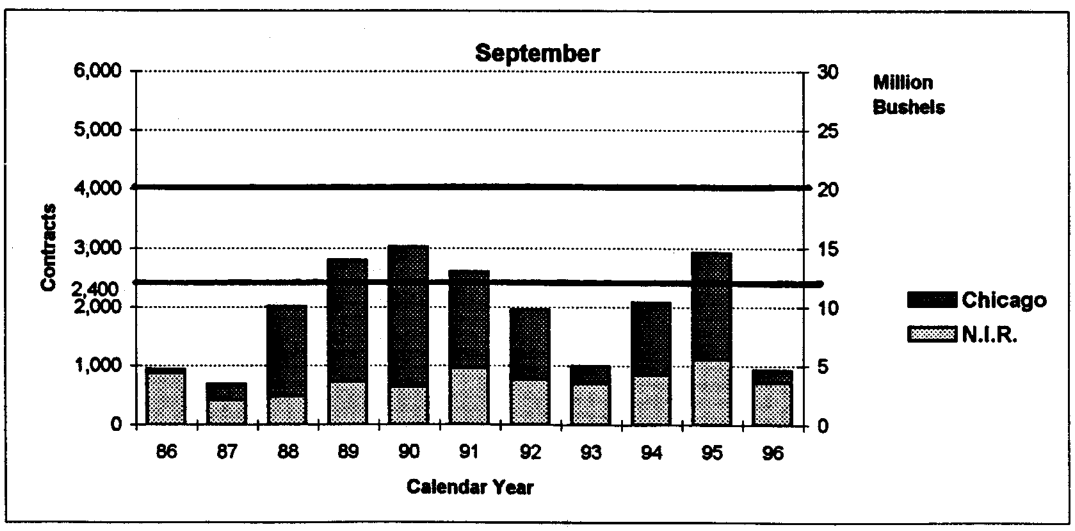
[18] As shown in the charts for shipments by all firms, including those firms that would be ineligible to issue certificates under the CBT proposal, the proposal improved marginally in that gross deliverable supplies for all firms were less than 2,400 contracts in two rather than four years for July.

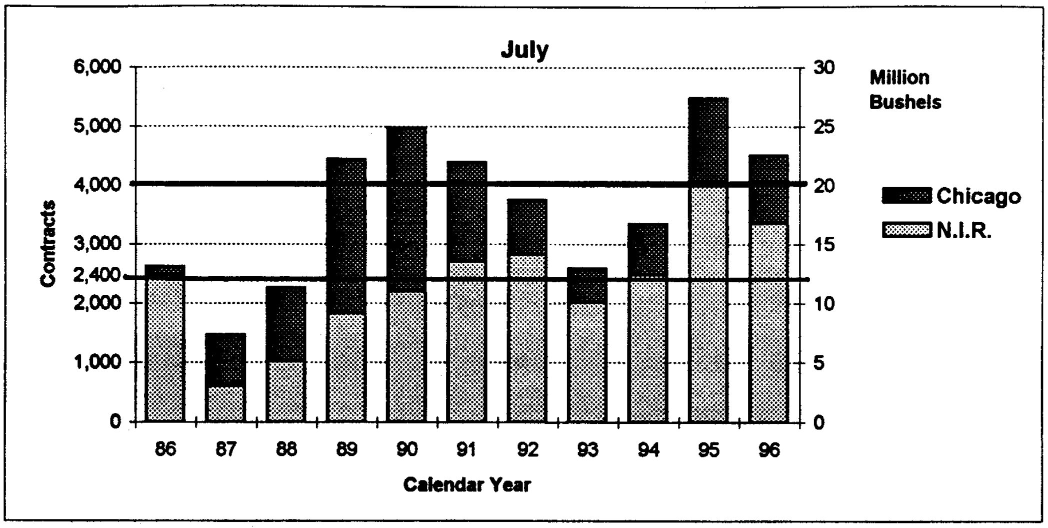
Soybeans -- Gross Deliverable Supplies for July, August and September for the Eligible Four Firms

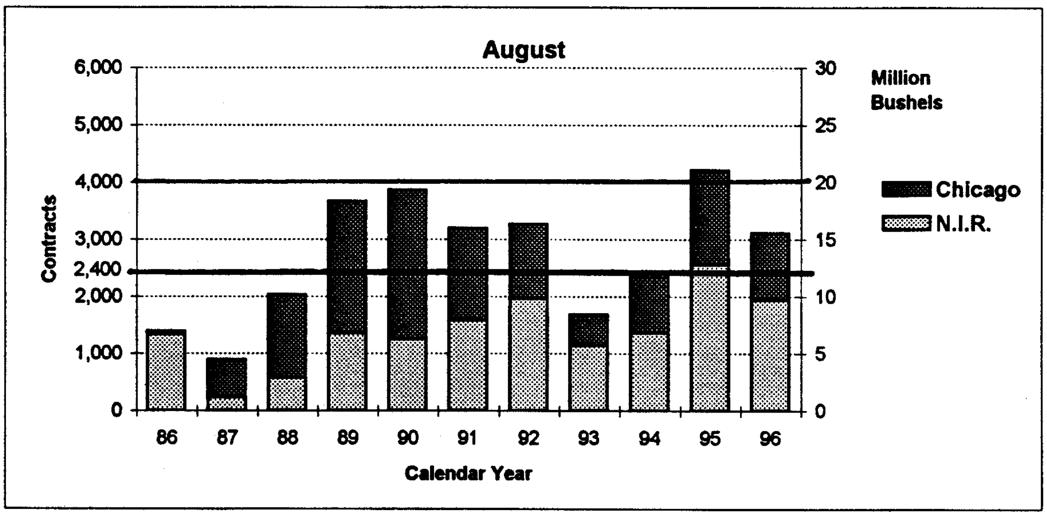


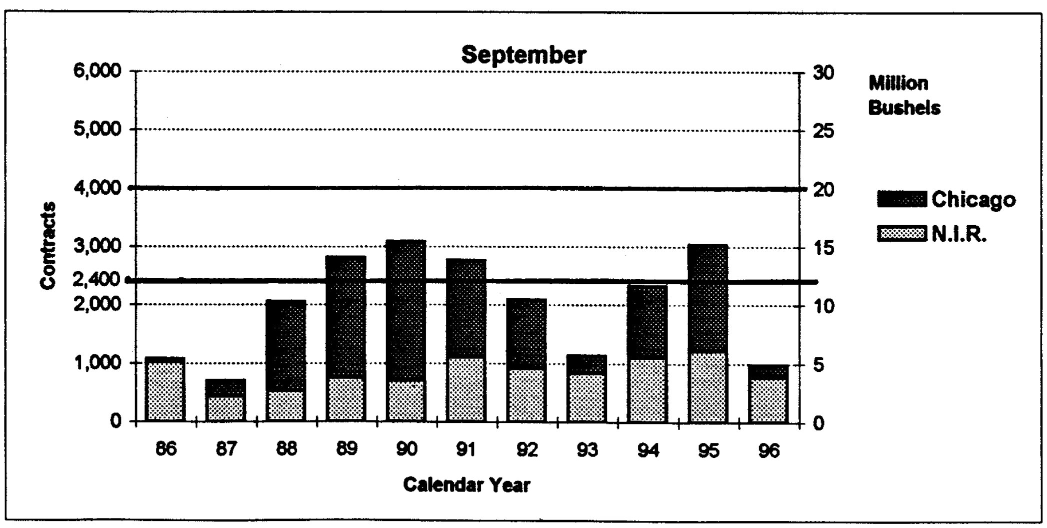




Soybeans -- Gross Deliverable Supplies for July, August and September for All Firms







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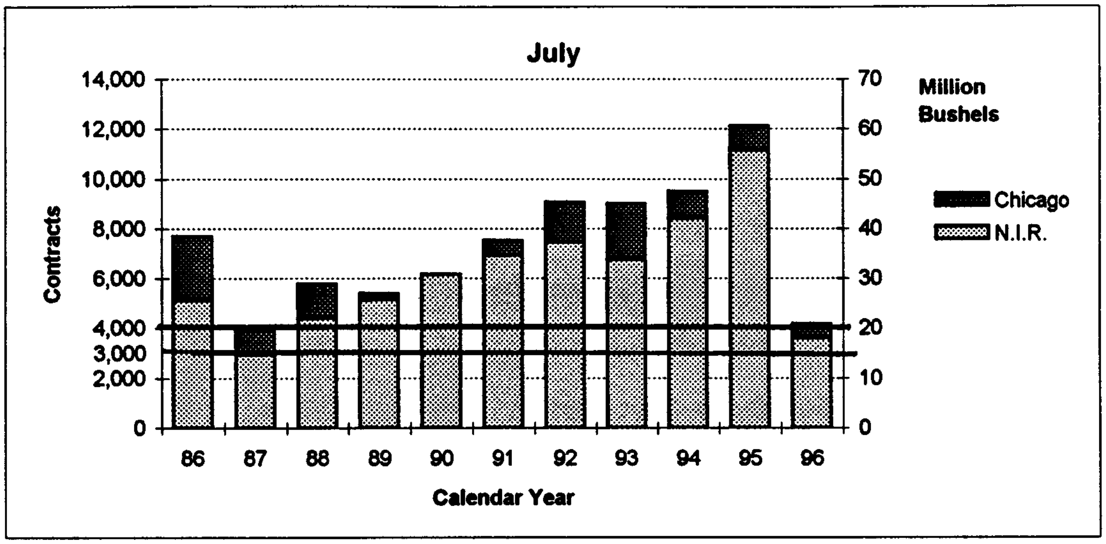
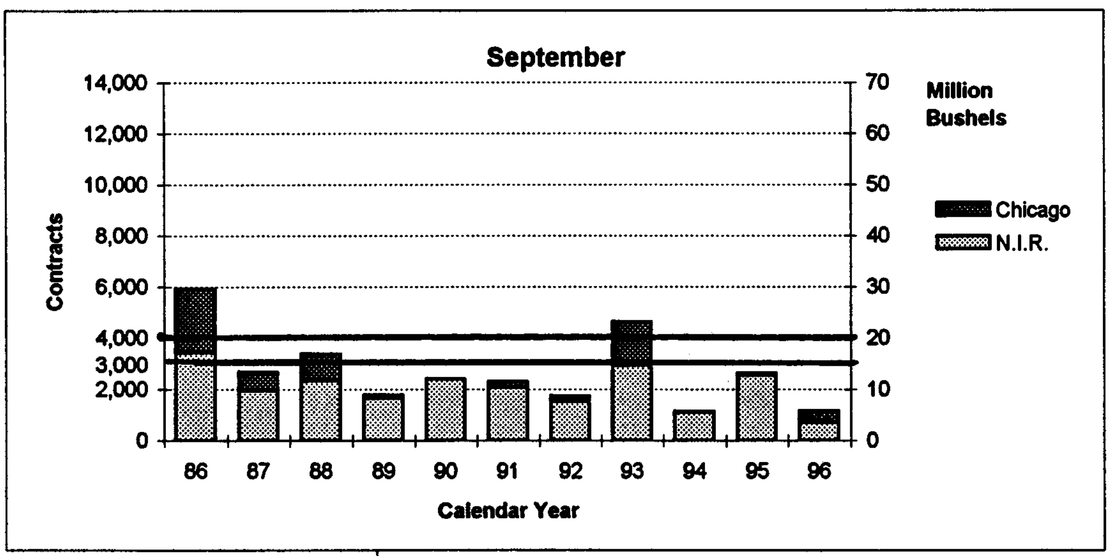
3. Gross Deliverable Corn Supplies. The CBT proposed corn contract would include the contract months of July and September, *inter alia*.[19] In the case of corn, the estimated gross deliverable supplies for July attributable to the four eligible firms reached or exceeded the 3,000-contract levels in all years and the 4,000-contract level in all years but one. However, gross deliverable supplies of corn for the four eligible firms in September fell below the 3,000-contract level in eight of the 11 years in the period analyzed and were less than 4,000 contracts in nine years. The gross deliverable supply estimates for all existing firms differed only slightly from the results for the four eligible firms.

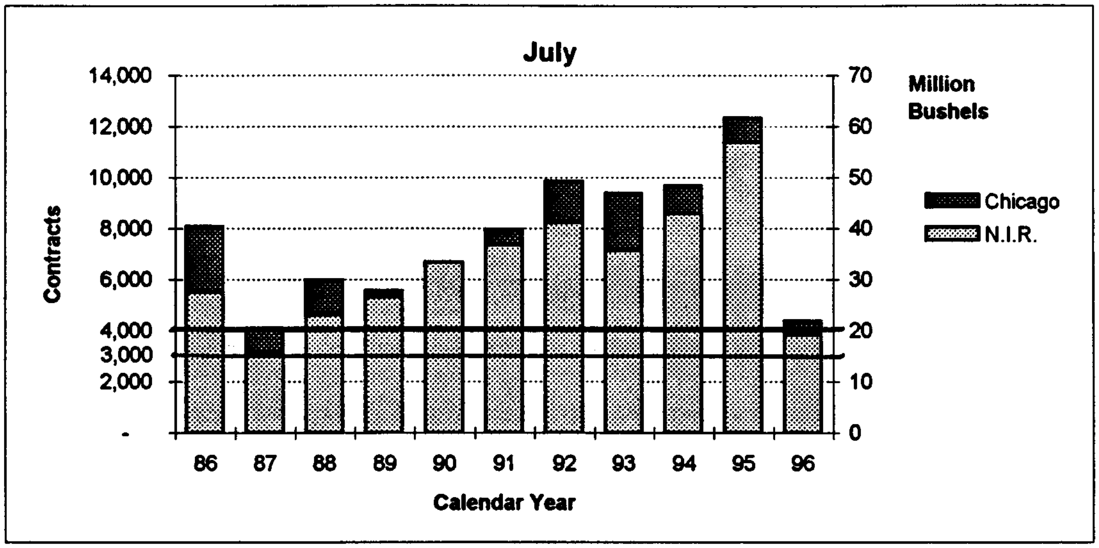
Corn -- Gross Deliverable Supplies for July and September for the Eligible Four Firms

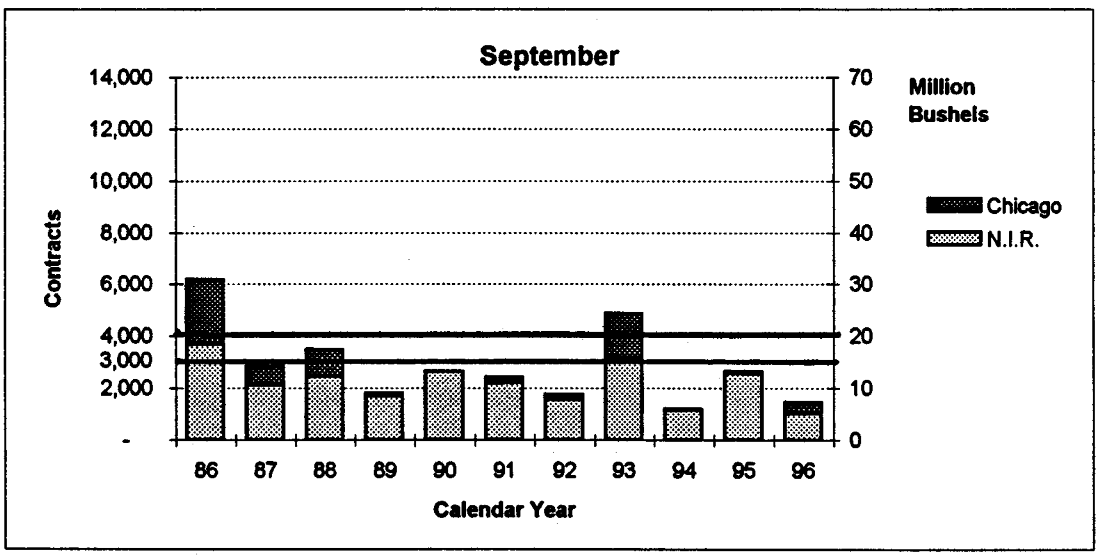




[19] Unlike the soybean futures contract, there is no August contract month listed for corn.

Corn -- Gross Deliverable Supplies for July and September for All Firms





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4. September New Crop Production. Although neither corn nor soybeans reached adequate minimum levels of potentially available gross deliverable supplies for September, because September is a transition month between old and new crop, deliverable supply estimates based upon barge shipments data for September may understate actual September deliverable supplies. The harvest of the new crops in corn and soybeans begins in September, and thus, new crop production may be available for delivery on the September contracts. Accordingly, the Commission also calculated estimates of new crop production of corn and soybeans that may have become available during the month of September.

The following table shows estimated September new crop production within 25 miles (trucking distance) of the proposed delivery points for corn and soybeans derived from USDA data. While these stocks might have been available for delivery during September, the extent to which this new crop production has already been included in the September Illinois River shipment data shown above or was already committed to other uses, particularly processing, cannot be ascertained.

A significant amount of corn was produced during September in most years and potentially might augment to some extent the gross deliverable supplies discussed above. However, there were very low levels of September soybean production during at least five of the 11 years analyzed, and even taking September production into account, September soybean supplies fall below a minimum adequate level. Further, September soybean production does not in any way supplement the inadequate gross deliverable supplies of soybeans in July and August.

The likelihood of price manipulation in September may be somewhat lessened because it is a transitional month between old and new crop years. The end of the crop year generally is a period of low supplies and relatively high prices. However, at harvest supplies are replenished, and the arrival of these new crop supplies frequently leads to lower prices. Significant new crop supplies usually become available in areas tributary to the northern Illinois River by mid October. The incentive to manipulate prices of the September futures contracts by attempting to corner the low remaining old crop supplies would be reduced by the potential losses that a manipulator might incur in reselling the shipping certificates or product obtained through September deliveries at lower prices after the arrival of new crop supplies.

Under the CBT proposal, the use of Illinois River shipping certificates rather than Chicago or Toledo warehouse receipts to effect delivery might also permit expanded deliveries of new crop production under the September contract. Rather than requiring movement of new crop supplies into a warehouse at a terminal market before delivery, as is necessary under current warehouse receipt delivery, the CBT proposal allows the issuance of shipping certificates for locations much closer to the production area and for up to 30 days of loading capacity and thus would give issuers more opportunity to deliver new crop production. They may issue shipping certificates on the basis that new crop supplies which are not immediately in hand will be available by the time loading is required under the shipping certificate.

The Commission considers the low levels of gross deliverable supplies of corn in September to be of less regulatory concern than the low levels of soybeans, which extend throughout the three summer months. Not only is the shortage of corn supplies of brief duration, but the fact that abundant supplies of new crop production are expected soon lessens the likelihood that corn shortage in that month would lead to the prohibited effects under section 5a(a)(10).

ESTIMATED CORN AND SOYBEAN PRODUCTION LOCATED NEAR PROPOSED DELIVERY POINTS DURING SEPTEMBER

[5,000-Bushel Contract Units]

Year	Estimated September production	
	Corn	Soybeans
1986	15,219	3,109
1987	26,78	36,056
1988	6,354	2,046
1989	2,013	583
1990	2,686	782
1991	41,663	8,729
1992	1,284	1,356
1993	644	29
1994	2,800	6,471
1995	2,574	487
1996	1,926	46

*The estimated production by September 30 of each year was calculated by multiplying USDA harvesting progress estimates for the Illinois and Indiana crop reporting districts that are adjacent to the revised delivery points by USDA production data for counties located within about 25 miles of the proposed delivery points.

5. Reductions From the Gross Deliverable Supplies. Additional factors must be considered which necessarily reduce the above estimates of gross deliverable supplies. These factors include: (a) the reliance on Chicago as a source of deliverable supplies; (b) the three-day barge queuing and priority load-out requirement; and (c) prior commercial commitments of available supplies. In addition, further reductions must be made from gross deliverable supplies resulting from the CBT proposal's lack of locational price differentials, the $40 million net worth requirement for issuers of shipping certificates, and foreseeable disruptions in barge transportation on the Illinois River; these additional factors are analyzed separately in later sections of this proposed Order.

a. Reliance on Chicago. To the extent that gross deliverable supplies of soybeans in some years have been at or above the 2,400- and 4,000-contract levels, they have generally depended on Chicago supplies to do so. For July, deliverable supplies of soybeans originating solely from the northern Illinois River delivery area reached or exceeded the 2,400-contract level in only three of the 11 years. In August and September, soybean deliverable supplies originating from the northern Illinois River alone did not exceed the 2,400-contract level on any occasion. The 4,000-contract level was not exceeded by northern Illinois River deliverable supplies of soybeans in any year in the July, August, or September delivery months. Thus, to the very limited extent that gross deliverable supplies in the past would have reached a minimum level, they would have done so because of the supplies in Chicago.

Cash market activity in Chicago is likely to continue its historical decline. While the estimation procedure for gross deliverable supplies used in this analysis tried to correct for the precipitous decline of Chicago by using 100 percent of the current capacity as a constraint on past supplies, that method certainly overstates the actual deliverable supplies that may originate from that location in the future. Chicago for many years has held stocks well below their maximum capacity levels, particularly in the critical summer months. The following chart demonstrates that underutilization of the remaining capacity in Chicago is continuing, despite the dramatic contraction in available capacity, and is most likely to continue to do so in the future. The likely result is that Chicago supplies will be reduced significantly in the future and would not be available in significant quantities under the CBT proposal.

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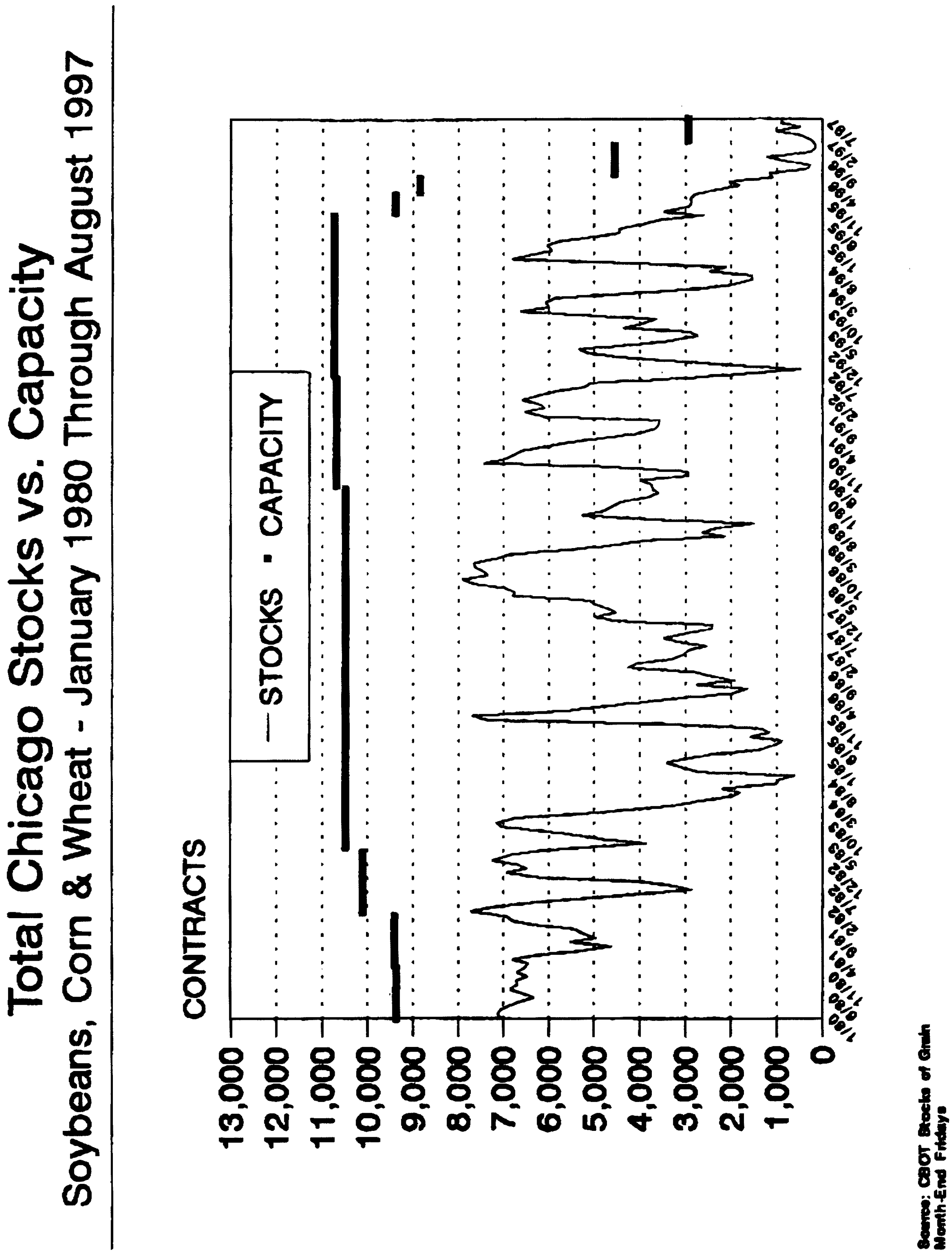

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b. The Three-Day Barge Loading Requirement. The CBT proposal includes a provision requiring a shipping certificate issuer to begin loading grain into the receiver's barges within three business days after it receives loading instructions and the receiver's barges are at the delivery facility ready to load. Most significantly, the issuer would be required to give preference to shipping certificate holders relative to any other customer or proprietary business for eight hours of load-out capacity per day. This requirement is contrary to the current contracts' delivery terms and to cash market practice, where new shippers are accommodated on a first-come, first-served basis. Concerns have been expressed by some commenters that, by requiring issuers to cease loading corn and soybeans in barges for their cash market business in order to meet the requirements of the shipping certificates and by requiring that only limited advance notice would have to be given to issuers, the CBT proposal would discourage potential issuers from issuing shipping certificates for futures delivery.

The CBT, on the other hand, has argued that the impact of the proposed preferential load-out requirement for futures deliveries on an issuer's willingness to issue shipping certificates would be limited because the rules would require the issuer to load out only eight hours per day, leaving the remaining 16 hours of each day to load other barges. CBT's position assumes, without providing supporting data, that labor physically and economically would be available for such a 24-hour day and that additional transportation and grain supplies could quickly be procured and coordinated to move the grain to the waiting barges.

While the effect of the proposed loading requirements on the willingness of issuers to issue shipping certificates for futures delivery is difficult to measure, it represents a significant departure from cash market practice and most likely would reduce the amount of available deliverable supplies.

c. Prior Commercial Commitments of Stocks. An additional factor which would reduce the above estimates of gross deliverable supplies is prior commitment of stocks. Determining deliverable supplies on the basis of shipment information does not make necessary deductions for that amount of the shipments which would be unavailable for futures delivery because they were otherwise committed and because no substitution was possible at an equivalent market price. While a number of commenters indicated that much of the corn and soybeans shipped on the Illinois River is not irrevocably committed, at least up to the point when the grain is loaded into a barge, the ability of firms economically to obtain supplies to meet existing commitments from alternative sources would be limited at times. This situation would be more likely to occur in those periods when supplies are limited, such as during the critical summer months of July, August, and September. The commitment of supplies of corn and soybeans under forward contracts or other marketing arrangements would at times make them unavailable to the futures delivery process until futures prices were significantly distorted relative to cash prices. Thus, it is likely that the actual available deliverable supplies for the futures contracts would be significantly less than indicated by the above gross estimates.

6. Conclusion. In summary, the proposed delivery provisions of the soybean contract clearly fail to meet the statutory requirement for minimum levels of deliverable supplies throughout the summer months of July, August, and September even before the above reductions (plus those discussed below) have been made, and the additional reductions required by these factors would further reduce the available deliverable supplies. For these reasons, price distortions and manipulation, market congestion, and abnormal movements of soybeans in interstate commerce would be likely to occur. Additional delivery points to increase the available deliverable supplies of soybeans, as well as other adjustments to CBT's proposal discussed below, are necessary to achieve the objectives of section 5a(a)(10).

As to the CBT proposal for corn, gross deliverable supplies throughout the year appear to be adequate except for September. While gross deliverable supplies for September do not meet the minimum level, they may be supplemented to some unknown extent by new crop production in September, and the September corn contract would be less likely to be subject to manipulation than other months with similar low levels because of the expectation of abundant supplies of new crop production in the immediate future. While these gross estimates of deliverable supply overstate economic deliverable supplies and must be reduced by the other factors discussed, the degree of reduction cannot be estimated with any certainty. The Commission's proposed action in changing and supplementing the proposed corn contract to add locational differentials, to eliminate the net worth eligibility requirement, and to broaden the contingency plan for river disruptions, discussed below, will have the effect of alleviating some limitations on deliverable supplies of corn under CBT's proposal. Accordingly, based on the record before it, the Commission does not find that the available deliverable corn supplies are inadequate under section 5a(a)(10) such that additional delivery points are necessary. Actual trading experience will reveal whether the level of deliverable supplies meets the requirements of section 5a(a)(10). Accordingly, the Commission directs the CBT to report on the actual delivery and contract expiration experience on an annual basis for the first five years after contract expirations begin under the revised contract terms.

IV. The Lack of Locational Price Differentials Violates Section 5a(a)(10)

Section 5a(a)(10) requires that, where more than one delivery point or commodity grade is specified, a futures contract must specify quality and locational price differentials to the extent necessary to prevent price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce. Guideline No. 1 and the Commission's policy on price differentials are predicated upon, and give further specificity to, section 5a(a)(10)'s requirements. As discussed above, Guideline No. 1 requires that futures contract terms and conditions provide for a deliverable supply that will not be conducive to price manipulation or distortion and that such a supply reasonably can be expected to be available to the short trader and saleable by the long trader at its market value in normal cash market channels. In addition, the Commission's policy on price differentials requires that, where cash market locational or quality differentials are stable, the futures contract should reflect ''normal commercial price differences as they are represented by cash price differences * * *.'' When cash market price differences are unstable or where the product flow in the cash market is not relevant to the two futures market points, the Commission's policy requires that differentials must be set at levels which fall within the range of values which are commonly observed.

The CBT's failure to specify locational price differentials violates section 5a(a)(10) as well as the requirements of Guideline No. 1 and the Commission's policy on locational price differentials. The cash market on the northern Illinois River clearly reflects a unidirectional flow of corn and soybeans and exhibits significant locational price differences, which have a stable relationship with one another, at the proposed delivery points. The failure of the CBT proposal to provide for locational price differentials reflecting the cash market not only would reduce available deliverable supplies on the contracts, but would result in price distortions and susceptibility to price manipulation, market congestion, and the abnormal movement of corn and soybeans.

Although the CBT describes its delivery system as a simple single delivery area, in fact it is a multiple delivery point system without differentials. This multiple delivery point system is comprised of physically-linked, but spatially-separated points along the northern Illinois River, which are affected by a unidirectional demand from the Gulf market across five different barge freight zones, including Chicago. Chicago may also be affected, at times, by a number of competing cash market demand pulls.

The CBT argues that section 5a(a)(10) is not violated by its proposal's lack of differentials because ''locational differentials for corn and soybeans at par fall well within the expected values of cash market differentials between the delivery points'' and that ''the differences in barge freight costs between locations on the NIR are typically * * * smallest during the summer.'' CBT June 16, 1997 submission, 40. However, this is not the appropriate review standard because the relative value of these commodities among the northern Illinois River delivery points is constant, quite transparent and based on established barge freight differences. Furthermore, even if it were, we find that a lack of price differentials is not commonly observed in the cash market.[20]

Moreover, differences in barge freight costs, while lower during the late spring and early summer months, begin to increase and are quite significant during the critical July and August period.

The value of corn and soybeans loaded into barges generally is greater at barge-loading facilities located down river relative to the value of grain loaded in barges at upriver locations, including Chicago. As indicated above, the CBT proposal essentially would price corn and soybeans when they are loaded on barges along the northern Illinois River destined for the export market centered in New Orleans. The futures contracts would be priced free on board (FOB) barge at the loading facilities.[21] Currently, the cash market for such products prices them at the CIF New Orleans price, which is uniform and widely known.[22] The cost of barge freight to New Orleans included in that price varies based on established barge freight costs that are higher at Chicago and lower as one descends the northern Illinois River and thus is closer to New Orleans. Those freight rates are transparent and widely reported. While they vary to some extent, they are expressed and reported publicly as a varying percentage of the fixed amounts found in the Waterways Freight Bureau Tariff No. 7. By backing out the freight amounts from the CIF price, one can calculate the differences in the value of the commodity FOB various Illinois River points.

During the critical summer months the price differential based on the freight rate between Chicago (the most northerly Illinois River delivery point) and Pekin (the most southerly Illinois River delivery point) has ranged in recent years between 4.1 and 5.3 cents per bushel of corn and between 4.4 and 5.7 cents per bushel of soybeans. These differences are very significant and are sufficient to distort prices, to limit deliverable supplies, and to divert them from one delivery point to another.[23]

Where, as here, a contract requires multiple delivery points in order to yield sufficient deliverable supplies and significant normal commercial price differences exist in the cash market between those locations, section 5a(a)(10) requires that the terms of the futures contract include locational price differentials. The failure to set locational price differentials reflecting normal cash market price differences has the economic effect of excluding the disadvantaged delivery point from being used for delivery. Such an exclusion may result in abnormal movement of the commodity away from the disadvantaged delivery point and to the advantaged delivery point. In order for a disadvantaged delivery point to function, the futures price has to increase above the commodity's underlying cash market value at the disadvantaged delivery point to overcome this built-in penalty. This opens the door to price distortion and price manipulation in the amount of the ''differential penalty.'' Alternatively, market congestion at the advantaged delivery point may result. These are precisely the types of market abuse that section 5a(a)(10) sought to avoid by requiring exchanges to ''permit delivery * * * at such * * * locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.'' For these reasons, the Commission finds that the lack of locational price differentials violates section 5a(a)(10).

V. The Failure Adequately to Address Foreseeable Interruptions to Deliveries Violates Section 5a(a)(10)

An additional concern regarding the operation of the CBT proposal applicable to both the corn and soybean contracts is its reliance chiefly upon a single mode of transportation to effect delivery—Illinois River barge transportation. A large number of commenters questioned the reliability of barge transportation on the Illinois River from the standpoint of assuring that takers of futures delivery would be able to receive and to transport their grain promptly in the event of a disruption of barge transportation on the river due to weather or lock maintenance.

There has been a long history of repeated, significant interruptions in transportation along the northern Illinois River. In three of the last 13 years, one or more of the locks on this portion of the river have been closed for repair by the Army Corps of Engineers for 60 or more consecutive days during the critical summer months, with the result that no barge traffic could pass through that point on the river on its

[20] Available information suggests that the cash market value of corn and soybeans loaded into vessels and rail cars at Chicago may at times equal or exceed the value of corn or soybeans loaded into barges at locations on the northern Illinois River delivery area. However, with the precipitous decline in the available deliverable supplies in Chicago, such occasional variances from the prices loaded on barges at Chicago and along the northern Illinois River will likely play a small role in the cash market in the future and are not considered to be a significant factor in setting locational differentials under the CBT's proposal.

[21] The acronym FOB, free on board, means that, under the terms of the sale of a commodity, the price agreed between the buyer and seller includes the cost of loading the product into transportation equipment (barges, rail cars, vessel, etc.) at a designated location.

[22] CIF New Orleans means that, under the terms of the sale, the price agreed upon between the buyer and the seller includes the freight and insurance to transport the products to New Orleans and to deliver them there. This market, which calls for grain to be shipped at the cost of the seller to export points in New Orleans, is very liquid, with corn and soybeans being actively traded throughout the year.

[23] The CBT implicitly recognized these cash market value relationships and the importance of barge-freight differences in valuing the commodities in formulating its proposed plan to price alternative delivery locations in response to transportation disruptions on the Illinois River. As described below, that proposal provides that alternative localities must be priced CIF New Orleans with the delivery taker reimbursing the maker for the cost of freight to New Orleans from the original delivery location.

way south to New Orleans.[24] In addition, traffic on the Illinois River is frequently impacted by weather conditions, including wind, high water during the spring and summer, and icing during the winter. The Coast Guard, an agency of the U.S. Department of Transportation, is responsible for maintaining safe passage along the nation's waterways and, when conditions warrant, issues safety advisories or compulsory safety zones restricting transportation on certain segments of the river. Between January 1991 and June 1997 the Coast Guard issued compulsory safety zones on segments of the northern Illinois River on 21 separate occasions. The delivery area on the northern Illinois River was affected by such a safety zone for substantial portions of the river from early June through the middle of August in 1993.[25]

The CBT proposal's heavy reliance on barge delivery would disadvantage receivers during those periods when barge traffic is negatively impacted by weather conditions or lock maintenance and repair. Prolonged closure of the river would increase the susceptibility of the futures contract to manipulation by issuers, who could issue large numbers of certificates during periods when those taking delivery would be unable to transport and to sell the product at an economic value in relation to the CIF New Orleans market.

The Commission is of the view that it is not an appropriate use of exchange emergency authority to address such significant and foreseeable disruptions to the operation of contract terms.[26] In response to repeated requests by the Commission staff, the CBT, by submission dated August 22, 1997, sought to cure this defect by proposing a plan to be followed in the case of transportation disruptions. This proposed contingency plan provides that, in the event that either the Peoria or LaGrange lock on the Illinois River (the two most southerly locks without an auxiliary) is scheduled, with six-months prior notice, to be closed for a period of 45 days or more, then the delivery maker and taker may mutually agree to alternative terms, or failing such agreement, the deliverer is obligated to provide loaded barges to the receiver at a point between the lowest closed lock and St. Louis or on the mid-Mississippi River between St. Louis and Dubuque, inclusive. The loaded barges would be valued CIF New Orleans, with the delivery taker responsible for paying to the delivery maker the transportation cost between the original shipping station and New Orleans. The reimbursement in transportation cost would be computed based upon 100 percent of the Waterways Freight Bureau Tariff No. 7 barge freight rate.

This proposal falls short of achieving its apparent objective of addressing the susceptibility of the corn and soybean futures contracts to price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce resulting from disruptions to river traffic. First, the proposed rule only addresses sustained blockages due to lock closures south of the delivery area. However, a similar situation could be precipitated by closure of one or a number of locks within the delivery area sufficient to disrupt traffic at a majority of shipping stations. Repairs are often made to more than one set of locks at a time, having the potential to increase the breadth of the disruption within the delivery area from such projects. Thus, although the same foreseeable situation rendering the contracts vulnerable to price manipulation or market congestion exists when the disruption is within the delivery area as when it is south of the delivery area, the contingency plan fails to address the former situation.

Secondly, when a sustained river closure of less than 45 days is announced, vulnerability to price manipulation is foreseeable. This is also true when locks are closed on less than the six-months notice, which the CBT has proposed as a condition for triggering the contingency procedures. This vulnerability arises from the ability of shipping certificate issuers under the CBT proposal to issue certificates representing up to 30 days of their capacity. Thus, an announced river closure of between 30 and 45 days, for example, would enable eligible issuers to deliver into the market the maximum number of shipping certificates permitted, secure in the knowledge that the holders of those certificates could not accept delivery of the corn or soybeans while the river is closed and that, once the obstruction to river movement was ended, the issuer could only be required to deliver on cancelled certificates over an entire-month period. In this connection, it should be noted that closings are announced for lock repairs, which generally are scheduled for the late summer months, the time when deliverable supplies are lowest and river traffic is generally at its lowest level. Futures contracts during these months would be most susceptible to manipulation if a prolonged closure extending to the arrival of the new crop allows futures deliverers to depress the price of an old crop futures month to levels reflecting new crop values, when the broader cash market is reflecting the usual old crop-new crop supply and demand conditions.

In addition, the proposal to value alternate delivery locations using 100 percent of the Waterways Freight Bureau Tariff No. 7 rate is inconsistent with the locational price differential found by the Commission to be required, as discussed below. The application of divergent differentials to the contracts, depending upon whether deliveries were subject to the contingency rule or to normal delivery procedures, could also contribute to price manipulation, market congestion, or the abnormal movement of commodities in interstate commerce.[27]

VI. The Minimum Net Worth Eligibility Requirement for Issuers Violates Section 15

In addition to the CBT's existing requirement of $2 million working capital required of firms regular for delivery under all its agricultural contracts, the CBT has proposed to require that firms eligible to issue shipping certificates under its proposed soybean and corn contracts must also

[24] Specifically, in 1984 the Lockport and Brandon Road locks were closed for 60 days in July, August, and September; in 1987 the Peoria lock was closed for 60 days in July, August, and September; and in 1995 the Lockport, Brandon Road, Dresden Island, and Marseilles locks each were closed for between 64 days and 77 days in July, August, and September.

[25] In addition to actions taken by the Coast Guard, the U.S. Army Corps of Engineers, which has operational control over river locks, may close a lock when it determines that icing conditions so require.

[26] The CBT proposed a separate rule, regulation 1081.01(12)(G)(8), to address possible disruptions to shipping traffic within the delivery area. That proposed rule provides that, if it becomes impossible to load at a designated shipping station "because of an Act of God, fire, * * * an act of government, labor difficulties, or unavoidable mechanical breakdown, the shipper will arrange for water conveyance to be loaded at another regular shipping station * * *" and will compensate the taker for resulting transportation costs, if any. It further provides, however, that if the impossibility of delivery exists at a majority of shipping stations within the delivery area, then shipment may be delayed. Although this proposed rule addresses conditions impeding delivery at one or some locations within the delivery area, it does not offer an acceptable solution to the contingency that all or most deliveries may be rendered impossible due to disruptions of river traffic south of the delivery area or at points affecting a majority of shipping stations within the delivery area. Because of the increased likelihood of price manipulation or market congestion arising from delayed delivery in such circumstances, a different and more effective contingency plan is required under section 5a(a)(10).

[27] Even if such differing tariffs would not have such adverse results, it would be "necessary or appropriate * * * to insure fair dealing * * *" in such futures contracts to apply the same differential in both instances under section 8a(7) of the Act.

meet a minimum net worth standard of $40 million. This requirement has the effect of reducing the amount of economically deliverable supplies by making ineligible for delivery certain existing loading facilities in the delivery areas owned by otherwise eligible firms. In addition, the requirement also constitutes a barrier to entry of firms wishing to establish facilities and to become eligible to issue shipping certificates. The Commission has analyzed this requirement under the provisions of section 15 of the Act and finds that it constitutes an unjustifiable barrier to entry and leads to undue market concentration when considered in the context of the other requirements those firms must meet.

Section 15 of the Act requires the Commission, when considering exchange rule proposals or amendments, to consider the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act.[28] Therefore, the CBT proposal's possible anticompetitive effects must be evaluated against its potential effectiveness in achieving the policies and purposes of the Act.

Because shipping certificates for contract delivery purposes are unsecured, all existing futures contracts that use shipping certificate delivery specify certain financial requirements for certificate issuers. Consistent with this approach, the CBT proposal requires that issuers of certificates have through-loading facilities on the northern Illinois River, obtain an irrevocable letter of credit in an amount equal to the value of their delivery commitments, and maintain a minimum of two million dollars in working capital. These requirements are comparable to those imposed on shipping certificate issuers in other futures markets, including the CBT's own soybean meal, diammonium phosphate and anhydrous ammonia futures contracts, the New York Cotton Exchange's frozen concentrated orange juice futures contract and the Minneapolis Grain Exchange's white wheat futures contract. Moreover, issuers of a shipping certificate under the CBT proposal would also be limited to issuing certificates of a value no greater than 25 percent of the issuer's net worth. However, in addition to all these requirements, the CBT's proposed corn and soybean contracts would require shipping certificate issuers to have a net worth of $40 million, a requirement that is not imposed in any other futures contract involving shipping certificates.

The effect of the proposed $40 million net worth requirement would be to limit issuance of shipping certificates to four large grain firms among the seven firms with shipping stations. At least three firms which currently operate shipping stations on the designated segment of the northern Illinois River and participate in the cash market by selling barges of corn and soybeans would be excluded from issuing shipping certificates for those same commodities on the CBT futures contracts. The Commission does not believe the CBT has presented a reasonable justification for this requirement.

Although the CBT's objective of protecting the financial integrity of the delivery process is reasonable, it is adequately achieved through the working capital and letter of credit requirements, as it has been for all other shipping certificate contracts, and through the limit on the value of certificates issued to 25 percent of an issuer's net worth. Forty million dollars is a high level of net worth that excludes three of the seven existing firms with loading facilities along the northern Illinois River and would act as a barrier to other new entrants. The resulting extremely high level of concentration of the market restricted to four issuers is demonstrated by the fact that the Herfindahl-Hirschman Index (HHI) for the proposed market is approximately 3,300.[29] This increase in concentration as compared with the current delivery system—530 points in the HHI—is likely to create or enhance market power or facilitate its exercise in this already highly concentrated market.

The CBT has failed to demonstrate a need for this particular requirement. Accordingly, the Commission finds that the $40 million net worth requirement is an unjustified barrier to entry into a highly concentrated market and violates section 15 of the Act.[30]

VII. Proposed Changes and Supplements to Comply With Sections 5a(a)(10) and 15

Under the provisions of section 5a(a)(10) of the Act, the Commission, having found that the response of the CBT to the notification relating to its corn and soybean futures contracts does not accomplish the statutory objectives of that section and ''after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *'' The Commission has determined that the following changes and supplements to CBT's proposal are necessary to achieve the objectives of section 5a(a)(10) and compliance with section 15 of the Act. The Commission has determined that deliverable supplies of soybeans should be increased through the retention of the delivery points under CBT's current contracts that the CBT has proposed to eliminate and that appropriate locational differentials should be applied to such delivery points. In addition, the Commission has determined for both the corn and soybean contracts to revise the proposed rule to impose appropriate locational differentials for Illinois River delivery points. The Commission has determined to revise the proposed eligibility requirements for issuers of corn and soybean shipping certificates by eliminating the net worth requirement of $40 million, which the Commission believes is an unnecessary barrier to entry. The Commission also has determined to revise the river closure contingency rule by reducing the continuous period of lock closure from 45 days as proposed to 15 days, by making it applicable whenever a majority of shipping stations within the northern Illinois River delivery area are affected by closure of any lock or locks, by making it applicable to all announced closures with no minimum notification period specified and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent.

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[28] *British American Commodity Options Corp.* v. Bagley, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,245 at 21,334 (S.D.N.Y. 1976) *aff'd in part and rev'd in part on other grounds*, 552 F. 2d. 282 (2d. Cir. 1977, *cert. denied*, 98 S. Ct. 427 (1977).

[29] The HHI is calculated by summing the squares of the individual market share of all of a market's participants. The 3,300 figure was obtained using rated delivery capacity of the four firms currently meeting the proposed capital requirements to measure market share. Those firms and their respective market shares are Archer Daniels Midland Co. (49 percent), Continental Grain Company (22 percent), Cargill, Incorporated (19 percent), and Consolidated Grain and Barge (10 percent). Adding in the three firms (American Milling Company, Garvey International, and Sours Grain Company) who, absent the proposal's $40 million net worth requirement, also would be eligible to issue delivery certificates in the proposed markets would lower the HHI to 2,511, still a high level of concentration but substantially less than that under the CBT proposal.

[30] Concerns about this concentration among those firms eligible to issue shipping certificates are compounded by the sizeable control some of the firms have over barge ownership, Gulf exports, and processing facilities. Several commenters expressed concern that this concentration increases the opportunity for price manipulation.

A. Delivery Points

In determining how to remedy the inadequacy of deliverable supplies under the CBT soybean proposal, the Commission accepts the delivery points in the proposal itself as a starting point and believes that the most reasonable and feasible way to enhance deliverable supplies is by adding additional delivery points. To do so, the Commission has decided to retain the delivery points under which the CBT's existing contract has been operating for years. Thus, the Commission had determined to retain Toledo and St. Louis as delivery points for soybeans.

In this regard, many commenters supported retaining the delivery point at Toledo, pointing out that Toledo's effectiveness as a delivery point is proven. They also maintained that Toledo brings with it the strength of having transportation ties to both the export markets via vessels on the Great Lakes and the expanding livestock feed demand in the southeastern U.S. via rail transportation. Although St. Louis has not been a significant delivery point under the current contract, it likely would become one under the contract's revised shipping certificate format.[31]

These two delivery points have the strong advantage of having been chosen by CBT as appropriate delivery points for its soybean contract and having been used as delivery points for the contract for several years. Toledo has been a delivery point on the CBT soybean contract since 1979; St. Louis has been a delivery point since 1993. The resulting experience and familiarity with these delivery points of the CBT, its members and commercial users of the soybean contract are strong indicators that the delivery points are feasible, workable and acceptable.

As discussed below, they also provide a substantial increase in the available deliverable supplies of soybeans. When Toledo and St. Louis are retained as delivery points, gross deliverable supplies are at or above the 2,400-contract level for all observations in both July and August during the past 11 years and in September for all but four of the last 11 years. The gross deliverable supplies are at or above the 4,000-contract level for 21 of 33 observations. The following chart shows the increases in gross deliverable supplies of soybeans which result from the retention of Toledo and St. Louis as delivery points.

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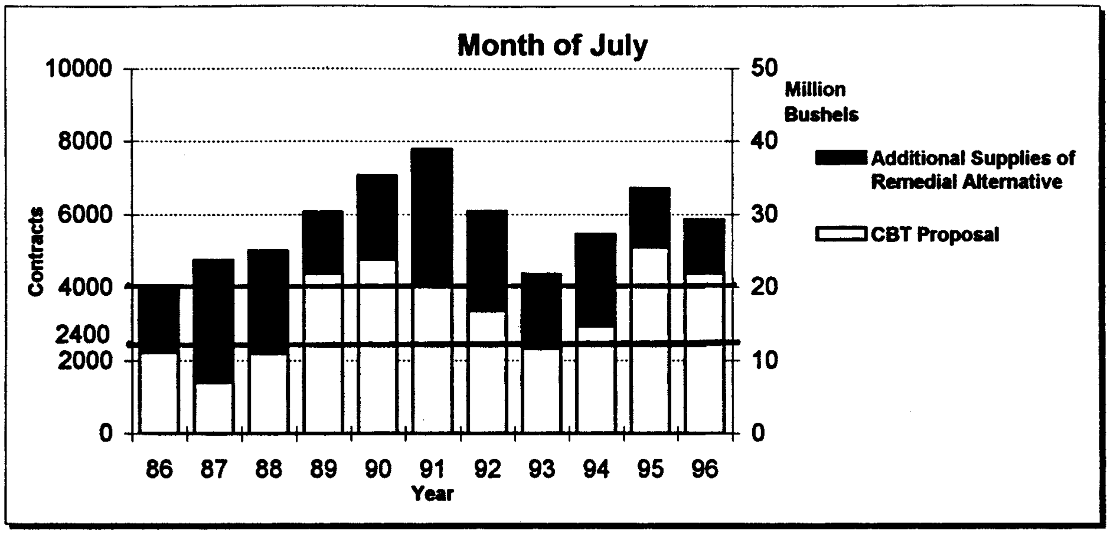
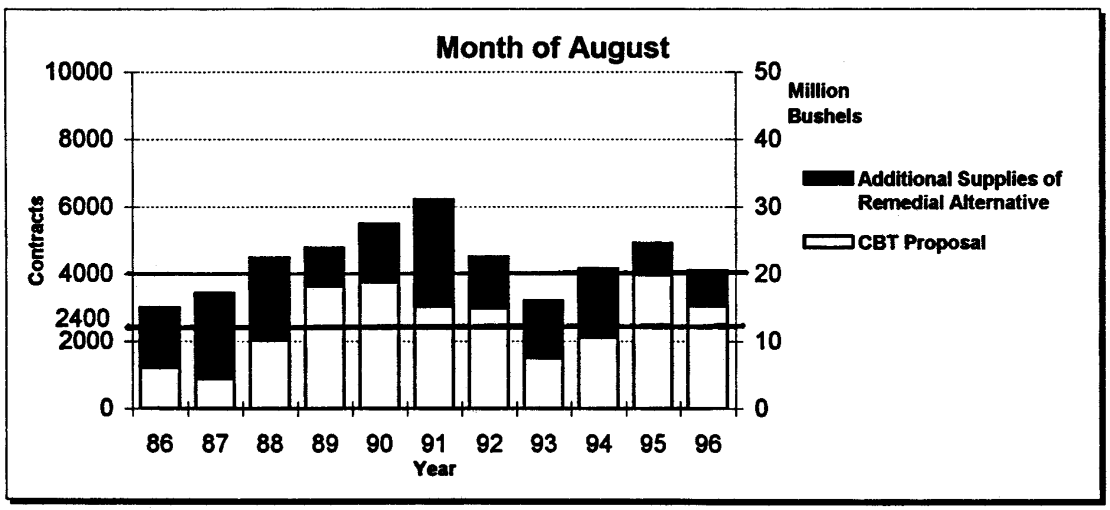
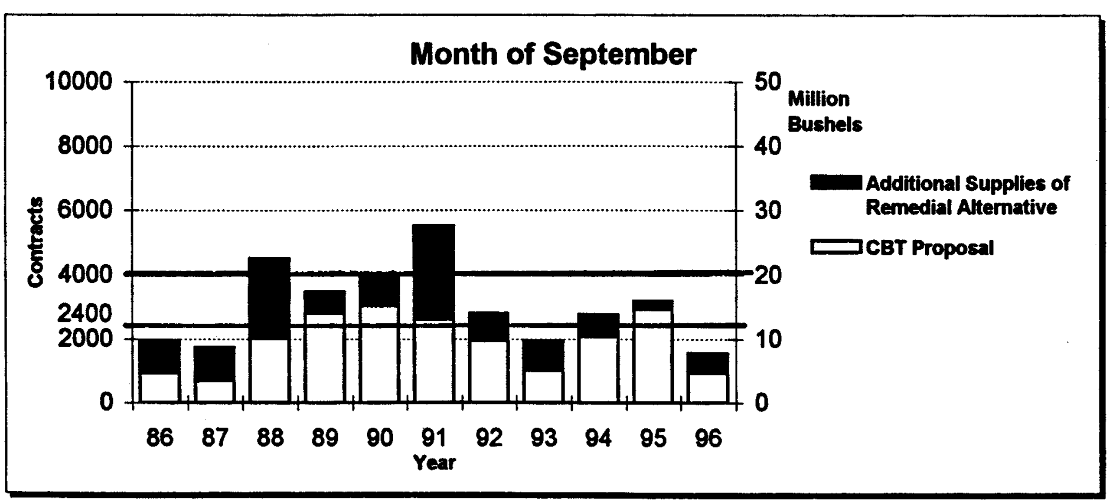
[31] Some commenters advocated the addition of new and completely untried delivery points, such as locations in the interior of Iowa, or delivery points that have been used for other contracts, such as Minneapolis, Minnesota. Although those suggestions may have merit, the Commission has decided that the experience with the current delivery points is entitled to significant weight.

Soybeans: Comparison of Deliverable Supplies under the CBT Proposal and the Remedial Alternative







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Accordingly, the retention of Toledo and St. Louis as delivery points is necessary and appropriate to provide sufficient levels of gross deliverable supplies of soybeans for July and August. Although the retention of Toledo and St. Louis does not yield gross deliverable supplies which meet the 2,400-contract level in four of the last 11 years in September, September is a transition month between the old and new crop year, as discussed above. New crop production is in the offing. Thus, even when September supplies on occasion fall below the 2,400-contract level, the incentive to manipulate prices based on a shortfall of old crop supplies is reduced because of the likelihood of rapidly falling prices as new crop supplies become available in the near future. In light of the reduced threat of price manipulation due to the imminence of new crop production, the Commission is not ordering that additional delivery points be added to the contract beyond retention of Toledo and St. Louis. Should September deliverable supplies of soybeans appear to be inadequate once trading under the revised soybean contract begins, the Commission would take appropriate steps to provide for additional delivery locations.[32]

Accordingly, the Commission finds that retention of Toledo and St. Louis is necessary and appropriate to provide the level of economically available deliverable supplies required by section 5a(a)(10).

B. Differentials

Section 5a(a)(10) specifies that where more than one delivery point is specified, the contracts must specify locational differentials to the extent necessary to prevent price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce. As discussed above, in light of the significant locational differentials in the cash market among the proposed delivery locations, the CBT's par delivery proposal for all potential corn and soybean delivery locations would reduce the level of economically available deliverable supply and would increase the susceptibility of the contracts to the prohibited effects under section 5a(a)(10). Accordingly, to meet the objectives of section 5a(a)(10), locational differentials must be set for the delivery locations on the corn and soybean contracts.

In setting those differentials, the Commission has been guided by commonly observed cash market price differences among the delivery points. The cash market differences in the prices of corn and soybeans for delivery points on the northern Illinois River are based primarily upon the cost of barge freight—the price of the product increases as one goes down the river, and the cost of freight to New Orleans decreases. These differences in freight prices are transparent, readily available, and commonly accepted as the best measure of cash price values. An analysis of barge freight rate data indicates that 150 percent of the Waterways Freight Bureau Rate Tariff No. 7 rate relative to Chicago, Illinois, is an appropriate differential.

Barge freight rate data for the years 1990 through 1996 indicate that 150 percent of tariff is well within the range of commonly observed freight rates, and it closely approximates the average percent of tariff quoted by barge companies for Illinois River shipment during this period. These data also indicate that 150 percent of tariff approximates the average percent of tariff quoted for July, August, and September, the months when deliverable supply concerns and the need to maximize available deliverable supplies are the greatest. In addition, a majority of those commenting on the issue agreed that it was appropriate to base price differentials on barge freight cost differences, and several of the commenters that suggested a fixed rate recommended 150 percent of tariff.

St. Louis is being retained as a delivery point for soybeans. The relative price of soybeans in the cash market among the various delivery points on the northern Illinois River and St. Louis is consistently determined based on the difference in freight costs to New Orleans, and therefore the Commission has decided to base the differential of St. Louis on 150 percent of freight tariff as well. Most commenters agreed that this approach is the appropriate measure of such price differences.

The differential applicable to Toledo, which is retained as a delivery point for soybeans, cannot be set based on the differentials relating to barge freight since Toledo is not located on the Illinois River and does not tend to deliver soybeans CIF New Orleans. The Commission's policy on differentials provides that such differentials must fall within the range of commonly observed cash market differences. Available data indicate that cash price differentials between Chicago and Toledo commonly range from Chicago's being at a premium to its being at a discount to Toledo. Therefore, establishing Toledo deliveries at par with Chicago is well within the range of commonly observed cash market price differences and provides an adequate approximation of the cash market price relationship between the two delivery points. Most commenters expressing an opinion on this issue agreed that soybeans should be deliverable in Toledo at par with Chicago.

Accordingly, the Commission has determined that for soybeans Chicago and Toledo should be at contract price with all other points at a premium over contract price based on 150 percent of the Waterways Freight Bureau Tariff No. 7 rate. For corn, Chicago should be at contract price with all other points at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois.

C. Disruptions to River Traffic

The CBT proposal's reliance chiefly on a single mode of transportation to effect delivery renders the contract susceptible to significant possible disruption of the delivery process, increasing the possibility of price manipulation, market congestion, or the abnormal movement of corn and soybeans in interstate commerce. Although the CBT submitted a contingency plan to address such disruptions to river traffic, that plan only addressed long-term disruption to river traffic resulting from closure of locks south of the delivery area announced six months in advance. As the Commission discussed above, however, the threat of manipulation of prices arises from the possible inability of long position holders to take delivery from all, or a significant number, of shipping stations due to the closures of a lock or locks located either within or south of the delivery area. The longer the period of the delay before alternate delivery procedures can be invoked, the greater the potential for manipulation. Moreover, this threat exists equally when a lock or locks have been closed with less than six-months notice. Accordingly, compliance with section 5a(a)(10) of the Act requires that this threat be diminished by reducing the period during which delivery may be delayed by eliminating the six-month notice requirement and by applying the contingency delivery provision to similar circumstances caused by obstructions to movement on the river

[32] Should actual trading experience reveal that September supplies must be supplemented, one means of accomplishing that objective would be to expand the proposed definition of the northern Illinois River to include a greater segment of the river's delivery area. With the specification of appropriate locational differentials, this change can be made at a later time with little or no disruption to the contract.

arising either inside or outside of the delivery area.

In determining the length of an announced obstruction which should give rise to a contingency delivery plan, the Commission analyzed information on past lock closures by the Army Corps of Engineers and on the issuance of river advisories or safety zones by the Coast Guard. During the last 17 years for which this information could be ascertained, it appears that there have been no unplanned and unannounced river closures of greater than two weeks duration. Accordingly, obstructions lasting at least 15 days after they are announced are appropriately addressed by application of the contingency delivery plan.

In addition, as discussed above, the application of divergent differentials to the contracts depending upon whether the delivery is subject to the contingency rule might also contribute to a price manipulation or to market congestion. Since the Commission has determined that a differential based on 150 percent of the Waterways Freight Bureau Tariff No. 7 rate should be applied to the corn and soybean futures contracts, the Commission believes that the provision in the contingency plan should be conformed to that differential, which will be applicable to all other deliveries made on the contracts at non-par locations.

Accordingly, the Commission is proposing under section 5a(a)(10) of the Act to change and to supplement the provisions of this part of the CBT proposal by reducing the continuous period of lock closure from 45 days as proposed to 15 days, by making the rule applicable to the closure of any lock or locks which affects shipments from a majority of shipping stations within the northern Illinois River delivery area, by making the rule applicable to all announced closures with no minimum notification period specified and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent.

D. Net Worth

As the Commission found above, although the CBT's objective of protecting the financial integrity of the delivery process is reasonable, it would be adequately achieved through requirements on working capital, letters of credit, and the ceiling on issuance of shipping certificates to 25 percent of net worth. Contrary to the policies underlying the federal antitrust laws, the $40 million net worth requirement would operate as a significant bar to entry for entities that would be eligible in all other respects, and the resulting market concentration would be very high. The CBT has failed to demonstrate a regulatory need for the requirement. Accordingly, the Commission is proposing to eliminate it under sections 15 and 5a(a)(10) of the Act.

E. 1999 Contract Months

By letter dated April 24, 1997, to the Chairperson of the Commission, the CBT advised the Commission that it had determined to list or to relist for trading the July 1999 and November 1999 soybean contracts and the July 1999 and December 1999 corn contracts, respectively, prior to Commission review and approval of the proposed changes to the delivery specifications. In doing so, the CBT indicated that it would

> list the aforementioned contracts with a special indicator * * * denot[ing] that the Exchange's Board of Directors and Membership have approved the terms of the listed contracts; however, the terms are subject to CFTC approval.

By letter dated May 2, 1997, the Commission responded that it ''will consider whether to approve the listing of these contract months as part of its ongoing proceeding pursuant to section 5a(a)(10) of the Act * * *.'' The Commission found that the ''listing of these trading months is not consistent with Commission rule 1.41(l) and that * * * their listing for trading by the CBT is not legally authorized at the present time.''

The Commission by this proposed Order announces its intention to change and to supplement the CBT's proposed amendments to those contracts on the grounds that they violate sections 5a(a)(10) and 15 of the Act. Accordingly, the Commission proposes to disapprove the terms of the 1999 corn and soybean contracts and proposes to apply the changes described above to such contracts under sections 5a(a)(10), 5a(a)(12), 8a(7), and 15 of the Act. The CBT may propose to list the 1999 corn and soybean contracts incorporating the Commission's proposed changes and supplements, and the Commission would approve such listing. The CBT should give notice to all traders that the Commission has proposed to disapprove the CBT's proposed amendments to the 1999 soybean and corn contracts.[33]

By the Commission (Chairperson Born, Commissioner Dial, Commissioner Spears; Commissioner Tull Dissenting With Opinion, Commissioner Holum Dissenting Without Opinion)

[33] The Commission notes that historically there has been very little or no open interest in delivery months for corn or soybeans that mature two years or more in the future.

CBOT Proposed Delivery Terms for Corn and Soybeans—Dissenting Opinion of Commissioner John E. Tull, Jr.

I strongly disagree with the majority's decision regarding the Chicago Board of Trade's proposed amendments to the delivery specifications to their corn and soybean contracts and vote to approve them.

Section 5a(a)(10) of the Commodity Exchange Act requires us to determine whether the delivery terms proposed by the CBOT ''will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.'' We must also ''take into consideration the public interest to be protected by the antitrust laws in requiring or approving any rule of a contract market.'' With all due respect to my colleagues and our staff, based on my analysis of the data, I am convinced that the proposed terms for both contracts as submitted meet these statutory requirements.

I also note that the CBOT convened two task forces of industry experts who debated the delivery points at length and the proposal has been approved by the exchange membership. I believe it is the right of a membership organization such as the CBOT to write the specifications of its own contract, as long as those specifications satisfy the statutory requirements.

Attachment 1

For the reasons explained in the ''Proposed Order of the Commodity Futures Trading Commission to Change and to Supplement Proposed Rules of the Board of Trade of the City of Chicago, Submitted For Commission Approval in Response to a Section 5a(a)(10) Notice Relating to Futures Contracts in Corn and Soybeans,'' the Commission is proposing under section 5a(a)(10) of the Commodity Exchange Act to change and to supplement rules and proposed rules of the Board of Trade of the City of Chicago. As provided under the Proposed Order, the Commission proposes to make the following changes:[34]

1. To change and to supplement the paragraph of Rule 1036.00 immediately following the paragraph beginning with the words ''Corn Differentials,'' to read as follows:

In accordance with the provisions of Rule 1041.00A, corn *for shipment from* regular warehouses *or shipping stations* located within the Chicago Switching District or the Burns Harbor, Indiana Switching District may be delivered in satisfaction of corn futures contracts at contract price, subject to the differentials for class and grade outlined above. [Corn for shipment from shipping stations located on the northern Illinois River may be delivered at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

[34] Bracketed type denotes the Commission's proposed changes or supplements to the CBT proposal. Italics denote changes proposed by the CBT. Deletions to proposed CBT language are not shown.

*The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 35.714 bushels per ton.]

2. To change and to supplement the paragraph of Rule 1036.00 immediately following the paragraph beginning with the words ''Soybean Differentials,'' to read as follows:

In accordance with the provisions of Rule 1041.00D, soybeans *for shipment from* regular warehouses *or shipping stations* located within the Chicago Switching District, the Burns Harbor, Indiana Switching District, [or the Toledo, Ohio Switching District] may be delivered in satisfaction of soybean futures contracts at contract price, subject to the differentials for class and grade outlined above.

[In accordance with the provisions of Rule 1041.00D, soybeans for shipment from shipping stations located on the northern Illinois River or from shipping stations within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) may be delivered in satisfaction of soybean futures contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

*The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 33.333 bushels per ton.]

3. To change and to supplement Rule 1041.00A to read as follows:

Corn. Corn *for shipment from* regular warehouses *or shipping stations* located within the Chicago Switching District or the Burns Harbor, Indiana, Switching District may be delivered in satisfaction of corn futures contracts at contract price. [Corn for shipment from shipping stations located within the northern Illinois River may be delivered in satisfaction of corn futures contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

*The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 35.714 bushels per ton.]

4. To change and to supplement Rule 1041.00D to read as follows:

Soybeans. Soybeans *for shipment from* regular warehouses or *shipping stations* located within the Chicago Switching District, the Burns Harbor, Indiana, Switching District [or the Toledo, Ohio, Switching District] may be delivered in satisfaction of soybean futures contracts at contract price. [Soybeans for shipment from shipping stations located on the northern Illinois River or from shipping stations within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) may be delivered in satisfaction of soybean futures contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

*The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 33.333 bushels per ton.]

5. To change and to supplement Regulation 1044.01 following the list of delivery locations and immediately prior to the issuer's signature block by adding, as follows:

[soybeans only:

____ St. Louis, MO, river mile marker ______

____ Toledo, OH, Switching District]

6. To change and to supplement Regulation 1056.01 by adding after the last paragraph the following:

[The premium charges on soybeans for delivery from regular shippers within the Toledo, Ohio, Switching District shall not exceed 12/100 of one cent per bushel per day.

The premium charges on soybeans for delivery from regular shippers within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) shall not exceed 10/100 of one cent per bushel per day.]

7. To change and to supplement the second paragraph of Regulation 1081.01(1) to read as follows:

(c) and in the case of Chicago, Illinois, Burns Harbor, Indiana, [and Toledo, Ohio,] *Switching Districts only, his registered storage capacity.*

8. To change and to supplement the third paragraph of Regulation 1081.01(1)(a) to read as follows:

(a) one barge per day at each shipping station on the northern Illinois River [and within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205);] and

9. To change and to supplement Regulation 1081.01(2) to read as follows:

Except for shippers located on the northern Illinois River [and within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205),] such warehouse shall be connected by railroad tracks with one or more railway lines.

10. To change and to supplement the first sentence of Regulation 1081.01(12)A to read as follows:

A. Load-Out Procedures *for Wheat and Oats and Rail and Vessel Load-Out Procedures for Corn and Soybeans from Chicago, Illinois, Burns Harbor, Indiana,* [and Toledo, Ohio, Switching Districts] *Only* * * *.

11. To change and to supplement the first sentence of Regulation 1081.01(12)B to read as follows:

B. Load-Out Rates *for Wheat and Oats and Rail and Vessel Load-Out Rates for Corn and Soybeans from Chicago, Illinois, Burns Harbor, Indiana,* [and Toledo, Ohio, Switching Districts] *Only* * * *.

12. To change and to supplement Regulation 1081.01(12)G(7) to eliminate the words ''on the Illinois Waterway,'' to read as follows:

Any expense for making the grain available for loading will be borne by the party making delivery, provided that the taker of delivery presents barge equipment clean and ready to load within ten calendar days following the scheduled loading date of the barge. If the taker's barges are not made available within ten calendar days following the scheduled loading date, the taker shall reimburse the shipper for any expenses for making the grain available. Taker and maker of delivery have three days to agree to these expenses.

13. To change and to supplement the last sentence of Regulation 1081.10(12)(G)(8) to read as follows:

(8) * * *. *If the aforementioned condition of impossibility prevails at a majority of regular shipping stations, then shipment* [shall be made under the provisions of rule 1081.(12)(G)(9).]

14. To change and to supplement the first paragraph and paragraph 9(b)(iii) and add a new paragraph at the end of Regulation 1081.01(12)(G)(9) to read as follows:

(9). In the event that [it has been announced that river traffic will be obstructed for a period of fifteen days or longer as a result of one of the conditions of impossibility listed in regulation 1081.10(12)(G)(8) and in the event that the obstruction will affect a majority of regular shipping stations located on the northern Illinois River,] *then the following barge load-out procedures for corn and soybeans shall apply:*

(b) * * *

(iii) *The taker of delivery shall pay the maker* 150% *of the Waterways Freight Bureau Tariff Number 7 barge benchmark rate from the original delivery point stated on the Shipping Certificate to NOLA.*

[(c) In the event that the obstruction or condition of impossibility listed in regulation 1081.10(12)(G)(8) will affect a majority of regular shipping stations located on the northern Illinois River, but no announcement of the anticipated period of obstruction is made, then shipment may be delayed for the number of days that such impossibility prevails.]

15. To change and to supplement the first paragraph of Regulation 1081.01(13)A by eliminating the words ''and soybeans'' in both instances in which they appear.

16. To change and to supplement Regulation 1081.01(13)D by retaining it and changing it to read as follows:

[Soybeans. For the delivery of soybeans, regular warehouses or shipping stations may be located within the Chicago Switching District, within the Burns Harbor, Indiana, Switching District (subject to the provisions of paragraph A above), within the Toledo, Ohio, Switching District, or shipping stations may be located on the northern Illinois River (subject to the provisions of paragraph A above), or within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205).

Delivery in Toledo must be made at regular warehouses or shipping stations providing water loading facilities and maintaining water depth equal to normal seaway draft of 27 feet. However, deliveries of soybeans may be made in off-water elevators within the Toledo, Ohio, Switching District PROVIDED that the party making delivery makes the soybeans available upon call within five calendar days to load into water equipment at one water location within the Toledo, Ohio, Switching District. The party making delivery must declare within one business day after receiving warehouse receipts and loading orders the water location at which soybeans will be made available. Any additional expense incurred to move delivery soybeans from an off-water elevator into water facilities shall be borne by the party making delivery PROVIDED that the party taking delivery presents water equipment clean and ready to load within 15 calendar days from the time the soybeans have been made available. Official weights and official grades as loaded into the water equipment shall govern for delivery purposes. Delivery in the greater St. Louis river-loading area must be made at regular warehouses or shipping stations providing water loading facilities and maintaining water depth equal to the average draft of the current barge loadings in this delivery area. Official weights and official grades as loaded into the water equipment shall govern for delivery purposes.]

17. To change and to supplement Regulation 1081.01(14)E by retaining it and changing it to read as follows:

[Soybeans. The warehouseman or *shipper* is not required to furnish transit billing on soybeans represented by warehouse receipt *or shipping certificate* delivery in Toledo, Ohio. Delivery shall be flat.]

18. To change and to supplement the first paragraph of the applicant's declaration contained in Regulation 1085.01 to read as follows:

We, the ________ (hereinafter called the Warehouseman/Shipper) owner or lessee of the *warehouse* located at ________ *or shipping station located* at mile marker ________ [of the ________ River,] having a storage capacity * * *.

19. To change and to supplement appendix 4E, paragraph 2, by eliminating the sentence which reads, ''The net worth of a firm regular to deliver corn or soybeans must be greater than or equal to $40,000,000.''

The Commission has determined that publication of the Proposed Order for public comment will assist the Commission in its consideration of these issues. Accordingly, the Commission is requesting written comments from interested members of the public.

Issued in Washington, D.C., this 16th day of September, 1997, by the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 97–24948 Filed 9–19–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 31, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25193 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 24, 1997.

PLACE: 1155 21ST ST., N.W., WASHINGTON, D.C. 9TH FL. CONFERENCE ROOM.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25194 Filed 9–18–97; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 17, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25195 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 10, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25196 Filed 9–18–97; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 3, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25197 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, October 27, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25198 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Monday, October 20, 1997.

PLACE: 1155 21st St. NW., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secrtary of the Commission.

[FR Doc. 97–25199 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, October 6, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25200 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Friday, October 14, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25201 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

‘‘FEDERAL REGISTER’’ CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 46484.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 p.m., Thursday, September 25, 1997.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the closed meeting to discuss Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25259 Filed 9–18–97; 2:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Wednesday, October 8, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25260 Filed 9–18–97; 2:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974: System of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Amendment of system of records to include new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the Commodity Futures Trading Commission is issuing notice of its intent to amend the system of records entitled CFTC–5, Employee Personnel/Payroll Records, to include new routine uses required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

DATES: Comments must be received on or before October 22, 1997.

ADDRESSES: Comments should be addressed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Comments may also be sent via the Internet to secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Office of the Executive Director, (202) 418–5157, or Glynn L. Mays, Office of General Counsel, (202) 418–5120, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Additions to Routine Use

Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (‘‘the Act’’), the Commodity Futures Trading Commission will disclose data from CFTC–5, Employee Personnel/Payroll Records, to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. Information on the FPLS and Federal Tax Offset System was last published in the **Federal Register** on July 25, 1996 (61 FR 38754).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for the purpose of establishing paternity and securing support. The Act amended 42 U.S.C. 653(n) to require quarterly wage reporting to the FPLS by federal employers of the name, social security number, and quarterly wages of each employee, effective October 1, 1997. The Act also added a new section, 42 U.S.C. 653a, which requires federal employers to provide information to the National Directory of New Hires established by 42 U.S.C. 653. Federal employers must report the name, address, and social security number of a new employee to the National Directory of New Hires effective October 1, 1997. Pursuant to the amendments to 42 U.S.C. 653 made by the Act, the enlarged FPLS will include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits, all effective October 1, 1997.

Also in accordance with the Act, effective October 1, 1998, the FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants in child support enforcement cases. When the Federal Case Registry is implemented, its files will be matched on an ongoing basis against the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The data to be disclosed by the Commodity Futures Trading Commission to the FPLS include: name, address, social security number, and quarterly wages. In addition, names and social security numbers submitted by the Commodity Futures Trading Commission to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct.

The data disclosed by the Commodity Futures Trading Commission to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

II. Compatibility of Proposed Routine Use

The Commodity Futures Trading Commission is amending these routine uses in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a ''compatible use'' is a use which is necessary and proper. See OMB Guidelines, 51 FR 18982, 18985 (1986). Since the proposed uses of the data are required by Pub. L. 104–193, they are clearly necessary and proper uses, and, therefore, compatible uses under the Privacy Act.

III. Effect of Proposed Changes on Individuals

The CFTC will disclose information under the propose routine uses only as required by Pub. L. 104–193 and as permitted by the Privacy Act. Disclosure will be handled through the agency's personnel/payroll system provider, the National Finance Center of the Department of Agriculture.

Accordingly, CFTC–5, Employee Personnel and Payroll Records, most recently published in the **Federal Register** on Thursday, August 21, 1997 (62 FR 44442, 44446) is amended as set forth below.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. In response to legitimate requests, this information may be provided to other federal agencies for the purpose of hiring or retaining employees, and may be provided to other prospective employers, to the extent that the information is relevant to the prospective employer's decision in the matter.

b. The information may be provided to the Justice Department, the Office of Personnel Management or other federal agencies, or used by the Commission in connection with any investigation or administrative or legal proceeding involving any violation of federal law or regulation thereunder.

c. Certain information will be provided, as required by law, to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System to enable state jurisdictions to locate individuals and identify their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

d. Certain information will be provided, as required by law, to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

e. Certain information will be provided, as required by law, to the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

* * * * *

Issued in Washington, DC, on September 16, 1997, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 97–25067 Filed 9–19–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment for the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions to the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received November 21, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness)(Force Management Policy)(Military Personnel Policy)/ Accession Policy, ATTN: LTC Michael Ostroski, Room 2B271, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 695–5529.

Title, Associated Form, and OMB Number: Request for Reference, DD Form 370, OMB Control Number: 0704–0167.

Needs and Uses: This information collection requirement is necessary to obtain personal reference data, in order to request a waiver, on a military applicant who has committed a civil or criminal offense and would otherwise be disqualified for entry to the Armed Forces of the United States. The DD Form 370 is used to obtain reference information evaluating the character, work habits, and attitudes of a applicant from a person of authority or standing within the community.

Affected Public: Individuals or households, non-profit or other for profit businesses, non-profit institutions, local, tribal and state agencies. Normally, this form would be completed by responsible community leaders such as school officials, ministers and law enforcement officials.

Annual Burden Hours: 12,500.

Number of respondents. 75,000.

Responses Per Respondent: 1.

Average Burden Per Response: 10 minutes per respondent.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information collected provides the Armed Services with specific background information on an applicant. A history of criminal activity, arrests, or moral offenses is disqualifying for military service. An applicant, with such a disqualifier, is required to submit references from community leaders who will attest to his or her character, attitudes or work habits. The DD Form 370 is the method of information collection which requests an evaluation and reference from a specific individual, within the community, who has the knowledge of the applicant's habits, behaviors, personality and character. The information will be used to determine suitability of the applicant for military service and the insurance of a waiver for acceptance.

Dated: September 16, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25086 Filed 9–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Survey of Air Force Small Business Innovation Research (SBIR) Contract Awardees, OMB Number 0701–0117.

Type of Request: Revision.

Number of Respondents: 17.

Responses Per Respondent: 1.

Annual Responses: 17.

Average Burden Per Response: 12 minutes.

Annual Burden Hours: 3 hours.

Needs and Uses: This information collection is a survey on noteworthy Small Business Innovation Research (SBIR) accomplishments and commercialization of small business research and development. The information is used to evaluate the success of the program in meeting the objectives of Pub. L. 97–219 and to publicize successful SBIR research and development (R&D) to potential purchasers. Respondents are small business companies who are awarded SBIR dollars to perform needed Air Force technologies. This survey is background for a metric which indicates to the SBIR Program Manager the companies who have commercialized as a result of their Phase II awards.

Affected Public: Business or Other For-Profit.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 16, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25087 Filed 9–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Ballistic Missile Defense Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Washington, D.C., on September 23–24, 1997.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense, through the Under Secretary of Defense (Acquisition and Technology), on all matters relating to BMD acquisition, system development, and technology.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended by 5 U.S.C., Appendix II, it is hereby determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: September 16, 1997.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25083 Filed 9–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DOD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on September 25 and 26, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public from 0830–1700, September 25 and 26, 1997 in order for the Panel to discuss classified material.

DATES: September 25 and 26, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0830–1700 on September 25 and from 0830–1700 on

September 26, 1997. During the closed session on September 25, the National Defense Panel staff will address Issue Reviews and Report Status on Projects at the Crystal Mall 3 office. On September 26 from 0900–1000 during the closed session the Panel will meet with Terry O'Connell, Chairman of the Reserve Forces Policy Board at the Crystal Mall 3 office. The remainder of the Panel's time will be used to discuss the NDP staff presentations on various future strategies, desired capabilities, and developing force elements.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: September 16, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25084 Filed 9–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on October 7, 1997; October 14, 1997; October 21, 1997; and October 28, 1997, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Pub. L. 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000

Dated: September 16, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25085 Filed 9–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; Comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 22, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 16, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Reporting and Recordkeeping Requirements for the William D. Ford Federal Direct Loan Program.

Frequency: Varies by section.

Affected Public: Individuals or households.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 4,402,728.

Burden Hours: 1,789,269.

Abstract: The proposed rules require the collection of additional information, in certain cases, in order to discharge a borrower's obligation to repay a Federal Direct Consolidation Loan due to a total and permanent disability.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: State Library Agencies Survey, FY 1997–FY 1999.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 51.

Burden Hours: 612.

Abstract: This survey is proposed as an annual data collection as part of a federal-state cooperative system of data collection. State Library Agencies (STLAs) are the official agency of a state charged by state law with the extension and development of public library services and they receive broader legislative mandates affecting libraries of all types in the states (i.e., public, academic, school, special and library systems). The data are collected entirely electronically and the survey is designed and coordinated by a federal/ state cooperative system. The survey will provide state and federal policymakers with information about

STLAs, their governance, allied operations, development services to libraries and library systems, support of electronic information networks, etc.

[FR Doc. 97–25043 Filed 9–19–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.264A]

Rehabilitation Continuing Education Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose Of Program: To support cooperative agreements for training centers that serve either a Federal region or another geographic area and provide a broad, integrated sequence of training activities throughout a multi-State geographical area.

Eligible Applicants: State and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Deadline For Transmittal Of Applications: November 14, 1997.

Deadline For Intergovernmental Review: January 13, 1998.

Applications Available: September 22, 1997.

Available Funds: $2,903,732.

Estimated Range Of Awards: $318,612—$525,900.

Maximum Awards By Rehabilitation Services Administration (RSA) Region: In no case does the Secretary make an initial award greater than the amount listed for each of the following RSA regions for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this amount.

Maximum Level Of Awards By RSA Region:

Region II—$439,800
Region III—$525,900
Region VI—$505,300
Region VII—$348,500
Region VIII—$318,612
Region IX—$428,500
Region X—$337,120

Note: Applicants should apply for level funding for each project year. Also, applicants are subject to a four percent cost-share requirement on awards.

Estimated Number Of Awards: 7.

Note: Applications are invited for the provision of training for Department of Education Regions II, III, VI, VII, VIII, IX, and X only. The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, and 86; and (b) The regulations for this program in 34 CFR Parts 385 and 389.

Note: The regulations in 34 CFR Part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

The Rehabilitation Act Amendments of 1992, enacted October 29, 1992, also applies. Specifically note that under section 21(b)(6) of the Rehabilitation Act, as amended, applicants are required to demonstrate how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

For Applications Contact: The Grants and Contracts Service Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., room 3317 Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. The preferred method for requesting applications is to FAX your request to (202) 205–8717. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Ellen Chesley, U.S. Department of Education, 600 Independence Avenue, S.W., room 3318 Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9481.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: September 17, 1997.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–25110 Filed 9–19–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–641–000]

ANR Pipeline Company; Notice of Site Visit

September 16, 1997.

On September 22, 1997, beginning at 1:30 p.m., the Office of Pipeline Regulation (OPR) staff will conduct a compliance inspection of ANR Pipeline Company's (ANR) Michigan Leg South Looping Project facilities in Porter County, Indiana, and Will County, Illinois, beginning at ANR's construction office located at 8619 Louisiana Place, Merrillville, Indiana.

All parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Warren C. Edmunds,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 97–25030 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–524–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 16, 1997.

Take notice that on September 11, 1997, Columbia Gas Transmission

Corporation (Columbia Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of November 1, 1997:

Title Page
Fourth Revised Sheet No. 25A
Fourth Revised Sheet No. 30.1
Sixth Revised Sheet No. 30B
Fifth Revised Sheet No. 31A
Second Revised Sheet No. 44A
Seventh Revised Sheet No. 262

Columbia states that it is making the instant filing to revise the Title Page to its FERC Gas Tariff, Second Revised Volume No. 1 to reflect Columbia's new business address and telephone and fax numbers. By this filing, Columbia states that it is also canceling and reserving for future use certain sheets referenced as the ''Collection Rates,'' filed pursuant to the Commission's order issued January 29, 1997 (78 FERC ¶ 61,071) in the settlement in Columbia's Docket No. RP95–408, et al. These tariff sheets are being canceled, for administrative reasons, since they are no longer applicable due to the Commission's April 17, 1997 order approving the settlement in Docket No. RP95–408, et al. (79 FERC ¶ 61,044), and by its August 19, 1997 Letter Order accepting the Refund Report, applicable to Docket No. RP95–408, et al., filed by Columbia on June 30, 1997.

Finally, Sixth Revised Sheet No. 262 lists the General Terms and Conditions (GTC) Section 47 which was inadvertently included from the electronic Pro Forma tariff sheet files of Columbia's August 30, 1996 letter to the Federal Energy Regulatory Commission (Commission) in Docket No. RP96–355. Those tariff sheets (as Pro Forma sheets) were not filed to be placed into effect, and the reference to Section 47 should, therefore, be removed from Columbia's currently effective tariff.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such interventions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. A copy of this filing is on file with the Commission and is available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25037 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–523–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 16, 1997.

Take notice that on September 11, 1997, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of November 1, 1997:

Title Page
Fifth Revised Sheet No. 019A
Fifth Revised Sheet No. 055
Second Revised Sheet No. 055A
Fifth Revised Sheet No. 063
Third Revised Sheet No. 063A
Second Revised Sheet No. 155A

Columbia Gulf is making the instant filing to revise the Title Page to reflect a change in the mailing address, telephone and fax numbers for its tariff. Columbia Gulf is also making changes to its tariff to correct minor grammatical errors and remove duplicative language found on its tariff sheets. Finally, Columbia Gulf states that it is withdrawing two tariff sheets because the two sheets are reserved sheets that are indicated as such on the preceding tariff sheets.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, affected state commissions.

Any person desiring to be herd or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such interventions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. A copy of this filing is on file with the Commission and is available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25036 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–712–000]

Discovery Gas Transmission LLC; Notice of Site Visit

September 16, 1997.

On September 25, 1997, beginning at 9:00 a.m., the Office of Pipeline Regulation (OPR) staff will conduct a compliance inspection of the onshore facilities of the Discovery Gas Transmission LLC Pipeline Construction Project in Lafourche Parish, Louisiana, beginning at the Woodson Construction Yard/Old Chevron Dock, near the city of Leesville, off of Highway 1.

All parties may attend. Those planning to attend must provide their own transportation (an air boat is required for most of the pipeline route).

For further information, please contact Paul McKee at (202) 208–1088.

Warren C. Edmunds,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 97–25031 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–68–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 16, 1997.

Take notice that on September 12, 1997, East Tennessee Natural Gas Company (East Tennessee) tendered for filing and acceptance the following: (1) A Gas Transportation Agreement between East Tennessee and Johns Manville International, Inc. (Johns Manville) pursuant to Rate Schedule FT–A (Manville Agreement); and (2) Fourth Revised Sheet No. 101 and Original Sheet No. 177 of East Tennessee's FERC Gas Tariff, Second

Revised Volume No. 1, to become effective on November 1, 1997.

East Tennessee states that on August 15, 1997, Johns Manville and East Tennessee entered into the Manville Agreement for service to commence on November 1, 1997. Under the Agreement, East Tennessee will provide firm transportation service for Johns Manville under East Tennessee's Rate Schedule FT–A. The Manville Agreement contains provisions which deviate from the Form of Firm Transportation Agreement contained in East Tennessee's Volume No. 1 Tariff (Pro Forma FT–A Agreement) in the following areas: (1) Description of the rate; (2) Transportation Quantity reduction rights; (3) requisite Commission approvals; and (4) affiliate assignment.

East Tennessee states that because the Manville Agreement contains provisions which may deviate in a material aspect from the Pro Forma FT–A Agreement, pursuant to Section 154.1(d) of the Commission's regulations, East Tennessee is filing the Agreement with the Commission and requesting that the Commission accept and permit it to become effective November 1, 1997. East Tennessee also states that, pursuant to Section 154.112(b) of the Commission's regulations, the tendered tariff sheets have been amended to include a reference to the Johns Manville Agreement.

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, NE., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr,

Acting Secretary.

[FR Doc. 97–25033 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–33–001]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 16, 1997.

Take notice that on September 12, 1997, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A and First Revised Volume No. 2, the following tariff sheets to become effective October 1, 1997:

Second Revised Volume No. 1–A
Substitute Tenth Revised Sheet No. 20
Substitute Eleventh Revised Sheet No. 23
Substitute Fourteenth Revised Sheet No. 24
Substitute Eleventh Revised Sheet No. 26
Substitute Tenth Revised Sheet Nos. 27 and 28
Substitute First Revised Sheet Nos. 37 and 38
Third Revised Volume No. 2
Substitute 41st Revised Sheet No. 1–D.2
Substitute 34th Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to reflect that the Annual Charge Adjustment to be collected for the fiscal year beginning October 1, 1997 is to be $0.0022 per dth. El Paso states that the instant filing should replace the filing made by El Paso dated August 28, 1997 which stated that the ACA beginning October 1, 1997 would be $0.0021 per dth.

El Paso requested waiver of Section 154.207 of the Commission's regulations to permit the tendered tariff sheets to become effective on October 1, 1997.

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 should 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25038 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–92–001]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 16, 1997.

Take notice that on September 12, 1997, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective October 1, 1997:

Substitute First Revised Sheet No. 11

Mojave states that the above tariff sheet is being filed to reflect that the Annual Charge Adjustment to be collected for the fiscal year beginning October 1, 1997 is to be $0.0022 per dth. Mojave states that the instant filing should replace the filing made by Mojave dated August 28, 1997 which stated that the ACA beginning October 1, 1997 would be $0.0021 per dth.

Mojave requested waiver of Section 154.207 of the Commission's regulations to permit the tendered tariff sheet to become effective on October 1, 1997.

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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25039 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–52–000]

New York State Electric & Gas Corporation; Notice of Filing

September 4, 1997.

Take notice that on August 29, 1997, New York State Electric & Gas Corporation (''NYSEG'') tendered for filing pursuant to Section 203 of the

Federal Power Act an application for Commission approval to effect a corporate reorganization which involves the creation of a holding company and the transfer of certain contracts, all as more fully set forth in the application.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 18 CFR 385.214). All such motions to intervene or protests should be filed on or before September 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25066 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–53–000]

Portland General Electric Co; Notice of Filing

September 4, 1997.

Take notice that on August 29, 1997, Portland General Electric Company (''PGE''), tendered for filing pursuant to Section 203 of the Federal Power Act (the ''FPA''), 16 U.S.C. § 824b, Part 33 of the Commission's regulations, 18 CFR Part 33, and 18 CFR 2.26, an Application for an order approving the assignment and transfer of two contracts to its corporate affiliate, Enron Power Marketing, Inc. (''EPMI'').

PGE states that the contracts proposed to be assigned are a Settlement Exchange Agreement, dated September 17, 1985, between the United States of America, and the Department of Energy, acting through the Bonneville Power Administration and PGE. The second contract is a Long-Term Power Sale Agreement dated August 24, 1987, between PGE and the United States of America, acting through the Western Area Power Administration. PGE states that the proposed assignment will give EPMI, a power marketer and broker, the ability to administer the contracts. PGE requests expeditious review of the Application.

PGE states that a copy of the Application is being served upon the Oregon Public Utilities Commission.

Any person desiring to be heard or protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25064 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–420–000]

Southern Natural Gas Company

Sepember 16, 1997.

In the Commission's order issued on August 15, 1997, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Thursday, October 9, 1997, at 11:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25035 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–650–000]

Williams Natural Gas Company; Notice of Application

September 16, 1997.

Take notice that on July 18, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP97–650–000 an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing WNG to increase the maximum allowable operating pressure (MAOP) of the Ottawa-Sedalia 20-inch loop pipeline located in Franklin County, Kansas and Johnson County, Missouri, and the Grain Valley 20-inch pipeline located in Cass and Jackson Counties, Missouri, all as more fully described in the application which is on file with the Commission and open to public inspection.[1]

Specifically, WNG states that uprating the aforementioned pipelines will improve system integrity and reliability, and will provide increased operational flexibility. WNG estimates that the proposed uprate will cost approximately $1,386,843 which will be paid from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 7, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act

[1] Williams was notified by letter on August 1, 1997 that its application could not be noticed until Williams filed the Environmental Report with its application as required by Section 380.3(c)(2) of the Commission's Regulations. Williams provided the report on September 12, 1997.

and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that approval for the proposed application is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WNG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25032 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4350–000, et al.]

The Washington Water Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 16, 1997.

Take notice that the following filings have been made with the Commission:

1. The Washington Water Power Company

[Docket No. ER97–4350–000]

Take notice that on August 26, 1997, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8. WWP requests the Service Agreement be given an effective date of October 1, 1997.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. SEMCO Energy Services, Inc.

[Docket No. ER97–4352–000]

Take notice that on August 26, 1997, SEMCO Energy Services, Inc. (SEMCO), tendered for filing, an application for blanket authorizations and certain waivers under various regulations of the Commission, and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective the earlier of October 27, 1997 or the date of a Commission order granting approval of this Rate Schedule.

SEMCO intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where SEMCO purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, SEMCO will be functioning as a marketer. In SEMCO's marketing transactions, SEMCO proposes to charge rates mutually agreed upon by the parties. In transactions where SEMCO does not take title to the electric power and/or energy, SEMCO will be limited to the role of a broker and will charge a fee for its services. SEMCO is not in the business of producing nor does it contemplate acquiring title to any electric power transmission facilities.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Electric and Power Company

[Docket No. ER97–4353–000]

Take notice that on August 26, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed Service Agreement with Amoco Energy Trading Corporation which it had filed in unexecuted form on July 24, 1997 in Docket No. ER97–3851–000.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER97–4354–000]

Take notice that on August 26, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between LG&E and The Energy Authority, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Interstate Power Company

[Docket No. ER97–4356–000]

Take notice that on August 26, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Western Area Power Administration (WAPA). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to WAPA.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER97–4357–000]

Take notice that on August 26, 1997, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Constellation Power Source, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Constellation Power Source, Inc., pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of July 27, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER97–4358–000]

Take notice that on August 26, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and The Energy Authority, Inc.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER97–4359–000]

Take notice that on August 26, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and The Energy Authority, Inc.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power and Light Company

[Docket No. ER97–4360–000]

Take notice that on August 26, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form Of Service Agreement for Non-Firm Point-to-Point Transmission Service establishing Constellation Power Source, Inc., as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of August 19, 1997, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. San Diego Gas & Electric Company

[Docket No. ER97–4361–000]

Take notice that on August 26, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing a Notice of Cancellation for Rate Schedule FERC No. 123—Coordination Agreement between San Diego Gas & Electric Company and Eastex Power Marketing, Inc., executed December 21, 1995.

SDG&E requests that this cancellation become effective October 31, 1997.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Rochester Gas and Electric Corporation

[Docket No. ER97–4362–000]

Take notice that on August 26, 1997, Rochester Gas and Electric Corporation (RG&E [filed a Service Agreement between RG&E and the Pennsylvania Power & Light Company (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December 31, 1996, filing in Docket No. OA97–243–000 (pending).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of August 20, 1997 for the Pennsylvania Power & Light Company Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER97–4363–000]

Take notice that on August 26, 1997, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. PowerCom Corporation

[Docket No. ER97–4364–000]

Take notice that on August 26, 1997, PowerCom Corporation (PC) petitioned the Commission for acceptance of PC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

PC intends to engage in wholesale electric power and energy purchases and sales as a marketer. PC is not in the business of generating or transmitting electric power.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. The Dayton Power and Light Company

[Docket No. ER97–4365–000]

Take notice that on August 27, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing Northeast Utilities Service Company, Union Electric Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the commission's notice requirements. Copies of the filing were served upon Northeast Utilities Service Company, Union Electric Company and the Public Utilities Commission of Ohio.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. The Dayton Power and Light Co.

[Docket No. ER97–4366–000]

Take notice that on August 27, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing Constellation Power Source, Inc., NP Energy Inc., Public Service Electric and Gas Company, Southern Energy Trading and Marketing, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the commission's notice requirements. Copies of the filing were served upon Constellation Power Source, Inc., NP Energy Inc., Public Service Electric and Gas Company, Southern Energy Trading and Marketing, Inc., and the Public Utilities Commission of Ohio.

Comment date: September 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PacifiCorp

[Docket No. ER97–4367–000]

Take notice that on August 27, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Long-Term Firm Point-To-Point Transmission Service Agreement between Black Hills Power and Light Company and PacifiCorp's Transmission Function under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to PacifiCorp's Merchant Function, Black Hills Power & Light Company, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A Copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through, a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Duquesne Light Company

[Docket No. ER97–4368–000]

Take notice that on August 27, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated August 22, 1997 with Strategic Energy Ltd. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Strategic Energy Ltd., as a customer under the Tariff. DLC requests an effective date of August 22, 1997 for the Service Agreement.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Duquesne Light Company

[Docket No. ER97–4369–000]

Take notice that on August 27, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated August 13, 1997 with Constellation Power Source, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Constellation Power Source, Inc. as a customer under the Tariff. DLC requests an effective date of August 22, 1997 for the Service Agreement.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Southern Company Services, Inc.

[Docket No. ER97–4370–000]

Take notice that on August 27, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed one (1) service agreement under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entity: Municipal Electric Authority of Georgia. SCSI states that the service agreement will enable Southern Companies to engage in short-term market-based rate transactions with this entity.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25063 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3131–032]

S.R. Hydropower of Brockway Mills; Notice of Availability of Draft Environmental Assessment

September 16, 1997.

An environmental assessment (EA) is available for public review. The EA is for an application for surrender of license. The EA reviews alternative for surrender and decommissioning the project. The EA finds approval of the application, with staff recommendations, would not constitute a major federal action significantly affecting the quality of the human environment. The Project is located on the Williams River, Windham County, Vermont.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed in the Reference and Information Center, Room 2A, of the Commission's Offices at 888 First Street, N.E., Washington, D.C. 20426.

Please submit any comment within 45 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 3131–032 to all comments. For further information, please contact the project manager, Mr. Robert Grieve, at (202) 219–2655.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25034 Filed 9–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of August 11 through August 15, 1997

During the week of August 11 through August 15, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 12, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 46; Week of August 11 through August 15, 1997

Appeals

David R. Berg, 8/14/97 *VFA–0306*

David R. Berg filed an Appeal from a determination issued to him on May 28, 1997, by the Human Resources Office (HR) of the Department of Energy (DOE), in response to a request for information filed under both the Privacy Act and the FOIA. In his Appeal, Mr. Berg contended that HR did not adequately explain the basis upon which the responsive documents were withheld under the Privacy Act and that HR improperly relied upon FOIA Exemptions 5, 6 and 7. The DOE found HR's determination insufficiently informative and short of what is legally required. The DOE remanded Mr. Berg's Appeal to HR to either release to Mr. Berg all of the documents responsive to his request or issue a new determination adequately supporting the withholding of the documents. Consequently, the Appeal filed by Mr. Berg was granted in part and denied in part.

W.L. McCUllough 8/12/97 *VFA–0314*

W.L. McCullough (Appellant) filed an Appeal of a Determination issued to him by the Department of Energy (DOE) in response to a request under the Freedom of Information Act (FOIA). In the request, the Appellant asked for documents concerning a grant awarded by DOE. In its Determination, the Oak Ridge Operations Office (DOE/ORO) released one document but stated that no other documents could be located in the possession of DOE. The Appellant challenged the adequacy of DOE/ORO's search. The Office of Hearings and Appeals (OHA) found that DOE/ORO had conducted an adequate search of

DOE offices. OHA also found that DOE grantees are subject to the provisions of 10 C.F.R. § 1004.3. However, in this case, there was no provision in the grant giving ownership of grantee-generated and owned documents to DOE. Accordingly, the Appeal was denied.

Personnel Security Hearing

Personnel Security Hearing, 8/14/97 *VSO–0139*

An OHA Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because the DOE obtained derogatory information that the individual had a positive drug test for marijuana and codeine. At a hearing convened at the individual's request, the individual maintained that the marijuana use was a one time event and that he used his wife's prescription codeine medicine for relief from a cough. The Hearing Officer found that the individual did mitigate the security concerns regarding the codeine use, but did not bring forth any corroboration to support the assertion that the marijuana use was a one time event. The hearing officer also found that the individual failed to present sufficient evidence of rehabilitation from the marijuana use. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 8/14/97, *VSO–0142*

An Office of Hearings and Appeals Hearing Officer issued an Opinion under 10 CFR Part 710 concerning the continued eligibility of an individual to hold an access authorization. After considering the testimony at the hearing convened at the request of the individual and all other information in the record, the Hearing Officer found that the individual was properly diagnosed as having a mental condition of a nature which caused or may cause a significant defect in judgment or reliability. The Hearing Officer found that the individual sufficiently mitigated DOE's concern that the individual had engaged in certain conduct which tended to show that he was not reliable. However, the Hearing Officer further found that the individual had failed to mitigate the legitimate security concerns of DOE relating to his mental condition. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

Supplemental Order

Vessels Gas Processing, Co., 8/13/97, *VFX–0012*

The DOE issued a Decision and Order modifying the per-gallon volumetric factor for use in the Vessels Gas Processing Company Special Refund Proceeding. Based upon a review of the Vessels enforcement proceeding documentation, the new volumetric factor was established as $0.0261 per gallon.

Refund Applications

Enron Corp./Gulf Coast Petroleum, Inc., 8/14/97, *RF340–109*

The DOE denied an application for refund submitted in the Enron Corporation (Enron) special refund proceeding concerning purchases from Enron made by Gulf Coast Petroleum, Inc. (Gulf Coast). The DOE found that Gulf Coast was a repeller whose purchases from Enron were made on the spot market, were sporadic and discretionary in nature, and apparently were unrelated to any business obligations to its regular customers. Accordingly, the DOE found that Gulf Coast fit the spot market presumption of non-injury for resellers, and that the firm had not made a showing of injury to overcome this presumption.

Permian Corporation/Kona Corporation, 8/13/97, *RF350–1*

Kona Corporation filed an Application for Refund in the Permian Corporation's special refund proceeding. Kona sought an above-volumetric refund based upon a claim that it suffered a disproportionate injury with respect to its purchases of crude oil in December 1980 and January 1981. The DOE found that Kona had not demonstrated that increases in its crude oil costs, and a declining share of price controlled crude oil, between September–October 1980 and December 1980–Janury 1981 were the result of regulatory violations by Permian. The DOE noted that prices generally were increasing during this period and that a number of factors could legally have accounted for the price increases. Therefore, Kona failed to demonstrate that it was entitled to an above volumetric refund. DOE noted that generally refiners are ineligible for refunds based upon purchases of crude oil because either they waived their right to a refund by filing a claim in the stripper well proceeding or the entitlements program insulated them from the affects of crude oil overcharges. Kona, however, had not filed a stripper well claim and there were no January or final entitlements lists that would have allowed the firm to pass overcharges on to the entitlements program for January 1981 purchases or for December 1980 purchases for which the firm received recertifications in 1981. Accordingly, DOE found that Kona should be granted a volumetric refund for its December 1980 and January 1981 crude oil purchases.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supplemental Refund Dist	RB272–00115	8/14/97
Crude Oil Supplemental Refund Dist	RB272–0116	8/14/97
Pahl-Ruff Partnership	RC272–370	8/13/97
Ruff Times Farms	RK272–881	
Pahl Farms	RK272–882	
Stauffer Chemical Company	RF272–97240	8/15/97
Vermilion Service Company	RG272–190	8/13/97
Danco Prairie ES Cooperative	RG272–196	
West Central Turkeys, Inc	RG272–892	8/12/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Al-Chroma Inc	RK272–4500
Almar Corp	RK272–4469
Anna Ruth Prassel	RK272–4351

Name	Case No.
"C" Ventures, Inc	RK272–4498
Carol Lina Bedford	RK272–4354
Charles E. Gay	RK272–4355
Daniel Products Company, Inc	RF272–98793
Dean Foods Products Co	RK272–4435
Edmund Aldrete	RK272–4352
Erie Lackawanna Railway Co	RK272–4474
Harley Clark Super 100	RF342–208
James Baehr Truck Service	RK272–4492
Loyd Salsbury/MYRL Salsbury	RK272–4502
Mount Pleasant Dairy, Inc	RK272–4454
Omc Johnson	RK272–4464
Paul W. Geisler	RK272–4356
Pepsi Cola Company	RK272–4499
Resource Net International	RK272–4491
Suprenant Wire & Cable	RK272–4494
T & W Forge, Inc	RK272–4473
Taos Gravel Products	RK272–4501
Texfie Industries	RK272–4497
Towry Enterprises, Inc	RK272–4493
University Gulf	RF300–21708
William D. Medlyn	RK272–4357

[FR Doc. 97–25073 Filed 9–19–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of August 4 Through August 8, 1997

During the week of August 4 through August 8, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 12, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 45; Week of August 4 Through August 8, 1997

Appeals

Arter & Hadden, 8/4/97, VFA–0309

The Department of Energy (DOE) issued a Decision and Order (D&O) denying a Freedom of Information Act (FOIA) Appeal that was filed by Arter & Hadden (A&H). In its Appeal, A&H challenged the adequacy of the search for responsive documents that was conducted by the DOE's Albuquerque Operations Office. In the Decision, the OHA found that the search was adequate.

Charles L. Wilkinson, III, 8/8/97, VFA–0312

Charles L. Wilkinson, III, (Wilkinson) filed an Appeal from a determination issued to him by the Savannah River Operations Office (SR) of the Department of Energy (DOE). In its Appeal, Wilkinson asserted that SR failed to conduct an adequate search for documents pertaining to the utilization of non-union labor at the landfill and D-Area Powerhouse located at the DOE's Savannah River Site. Additionally, Wilkinson asserted that SR had improperly withheld 17 documents in their entirety pursuant to Exemption 5. After reviewing the search that was conducted for responsive documents, the DOE determined that SR conducted an adequate search for documents. However, while DOE determined that SR properly invoked Exemption 5 for 15 of the documents in question these documents were found to contain a small amount of material which could be released to Wilkinson. One document was properly withheld in its entirety pursuant to Exemption 5. With regard to the remaining document, SR requested that it be given an opportunity to make another determination regarding that document. Consequently, Wilkinson's Appeal was granted in part.

Egan & Associates, 8/6/97, VFA–0318

The DOE's Office of Hearings and Appeals (OHA) issued a decision dismissing the Freedom of Information Act (FOIA) Appeal filed by Egan & Associates. The Appeal was dismissed because OHA does not have jurisdiction when the requester has not received an initial determination from an Authorizing Official, or when an appeal is based on the agency's failure to process a FOIA within the time specified by law.

Personnel Security Hearing

Personnel Security Hearing, 8/7/97, VSO–0150

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 CFR Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer found that the individual had been appropriately diagnosed with a mental illness affecting his judgment and reliability. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Request for Exception

Patriot Petroleum, Inc., 8/4/97, VEE–0045

Patriot Petroleum, Inc. (Patriot) filed an Application for Exception from the Energy Information Administration

(EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Therefore, the DOE denied Patriot's Application for Exception.

Refund Application

Primerica Corporation, 8/8/97, RG272–1074

The Department of Energy considered a portion of a refund application filed by Primerica Corporation in Case No. RF272–68493. The DOE considered whether Primerica, as the successor to the American Can Company, was entitled to a refund for two businesses sold by American Can after the refund period. The DOE determined that the agreement pursuant to which American Can sold the can business contained language sufficiently broad in scope to transfer the right to the refund. The DOE also determined that American Can's incorporation of its interest in Chemplex, a joint venture engaged in chemical production, and American Can's subsequent sale of the stock to another firm, transferred the right to a refund. The DOE provided Primerica with an opportunity to file comments on whether its refund for the chemical business in *Geety Oil Company/Primerica,* 17 DOE ¶85,354 (1988), should be rescinded.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Adeline Blumhorst Et Al	RK272–02270	8/7/97
Asamera Oil (U.S.) Inc	RC272–367	8/8/97
Steuart Transportation Co	RC272–368	
Asamera Oil (U.S.) Inc	RK272–4336	
Steuart Transportation Co	RK272–4337	
Branson R–V School District Et Al	RF272–96300	8/7/97
Fearnley & Eger AS Et Al	RA272–79	8/8/97
Morris Hertling & Co	RF272–79057	8/6/97
North Point Cab Co	RF272–97051	8/4/97
Plastics Universal Corp	RC272–366	8/7/97
Pet, Inc	RK272–4335	
Plastics Universal Corp	RK272–4069	
Pet, Inc	RC272–369	
Ray G. Andis Et Al	RF272–39798	8/4/97
Service America Corp	RK272–04232	8/4/97
Tri-County FS, Inc	RR272–00298	8/7/97

[FR Doc. 97–25074 Filed 9–19–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5896–2]

Agency Information Collection Activities: Proposed Collection; Emergency Clearance Request; Comment Request; State Use of EPA's Policy on Compliance Incentives for Small Businesses or Comparable State Policy on Reducing Penalties for Small Entities/State Use of Penalty Reduction Policies for Small Entities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA has submitted an emergency clearance request for the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): State Use of EPA's Policy on Compliance Incentives for Small Businesses or Comparable State Policy on Reducing Penalties for Small Entities. The emergency clearance request has been submitted for emergency processing within 14 days. During this time period, EPA is soliciting comments on specific aspects of the proposed information collection. The Agency is seeking this Information Collection Request to cover a six month period. The Agency is preparing another Information Collection Request that will go through full approval process to cover subsequent requests for information concerning State use of EPA's Policy on Compliance Incentives for Small Businesses or similar State penalty reduction policies/programs for small entities.

DATES: Please submit comments on or before October 6, 1997.

ADDRESSES: U.S. EPA, Office of Enforcement and Compliance Assurance (2201A) 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Karin Leff, 202–564–7068/202–564–0037 fax, Leff.Karin @ EPAmail.EPA.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are the individuals in each state responsible for implementing EPA's Policy on Compliance Incentives for Small Businesses or comparable state policies reducing penalties for small entities.

Title: State Use of EPA's Policy on Compliance Incentives for Small Businesses or State Policy on Reducing Penalties for Small Entities.

Abstract: Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires EPA to report to Congress no later than March 29, 1998, on the impact of its program or policy to reduce/waive penalties for small entities including the scope of its program or policy, the number of enforcement actions against small entities that qualified/did not qualify for the program or policy and the total amount of penalty reductions/waivers. EPA's program consists of its Policy on Compliance Incentives for Small Businesses (Small Business Policy), Policy on Flexible State Enforcement Responses to Small Community Violations and Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations policy. These policies waive or reduce penalties for entities who discover first-time violations through on-site government-sponsored compliance assistance or audits, promptly disclose and correct the violations and meet certain other criteria. The Agency is tracking the use of these policies by the ten EPA Regions. However, the Policy on Compliance Incentives for Small Businesses (Small Business Policy) will be implemented primarily in the states as states are delegated the majority of EPA programs and will be the predominant providers of on-site compliance assistance. States may be implementing EPA's small business policy or a comparable state policy. Accordingly, in order to report comprehensively to Congress on the impact of the Agency's program to reduce/waive penalties for small entities, it is important that EPA obtain information from the states on their implementation of a comparable policy or program.

EPA, working alone or with state-affiliated organizations, will send a brief questionnaire to each state environmental regulatory agency . Specifically, the Agency will request information on: the scope of a state's program or policy to reduce/waive penalties for small entities, the number of enforcement actions against small entities that qualified/did not qualify for the program or policy, the total amount of penalty reductions/waivers and the behavioral/environmental impact of a state's program or policy. Responses to the collection of information are voluntary. This information will enable the Agency to: fulfill its statutory obligation to Report to Congress; better understand the impact of its Small Business Policy or comparable state policies on small entities and the environment; tailor its policies and programs to assist small entities in complying with regulatory requirements and reduce or waive penalties levied on first-time violators. The information, in addition, will be used by Congress to evaluate the implementation of the Small Business Regulatory Enforcement Fairness Act of 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The total burden of responding to the questionnaire is summarized by the following information: Review instructions (.25 person/hour); Collection/aggregation and validation of information (10 person/hours); Filling out the questionnaire (.5 person/hours). The average hourly burden to the states for this one-time report to Congress is estimated to be 10.75 person/hours. The respondent costs have been calculated on the basis of $33 per hour for a total of $354.75. The total cost burden for this one-time report to Congress for all states is estimated to be $17,737.50. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 12, 1997.

Elaine G. Stanley,

Director, Office of Compliance.

[FR Doc. 97–25091 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5896–5]

National Environmental Justice Advisory Council; Notification of Charter Renewal

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency hereby announces the recharting of the National Environment Justice Advisory Council (NEJAC) for an additional 2 year period effective 9/29/97. The Advisory Council provides advice to the Administrator of EPA on issues related to managing environmental justice. This council consists of 25 individuals selected to represent the seven major stakeholder categories; academia, community organizations, industry, state/local governments, tribal governments, non-government organizations, and environmental organizations. This council convenes to review resolutions prepared in the subcommittees and to hear public comments during the Public Comment Period held during each meeting, normally for two nights for at least two hours each night. The Advisory Council has six subcommittees to help develop strategic options for EPA. Each subcommittee is comprised of approximately ten individuals knowledgeable in the subject area, from the NEJAC Council as well as from other stakeholder organizations. These subcommittees are: Waste and Facility Siting, Enforcement, Health and Research, Public Participation and Accountability, Indigenous Peoples, and International. Copies of the new revised charter, information regarding the NEJAC membership and other pertinent Environmental Justice knowledge can be obtained by dialing the 24 Hour Office of Environment Justice Line on 1–800–962–6215;

FOR FURTHER INFORMATION CONTACT: Marva E. King, NEJAC Program Manager at 202–564–2599.

Dated: September 11, 1997.

Robert J. Knox,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 97–25093 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140262; FRL–5744–5]

Access to Confidential Business Information by General Sciences Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, General Sciences Corporation (GSC), of Laurel, Maryland, access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W7–0030, contractor GSC, of 6100 Chevy Chase Drive, Laurel, MD, will assist the Office of Pollution Prevention and Toxics (OPPT) by providing technical support for exposure model identification and evaluation, maintenance of the Graphical Exposure Modeling (GEMS), and GEMS for the personal computer and modeling for exposure assessments of new and existing chemicals.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W7–0030, GSC will require access to CBI submitted to EPA under sections 4, 5, 6 and 8 of TSCA to perform successfully the duties specified under the contract. GSC personnel will be given access to information submitted to EPA under sections 4, 5, 6 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6 and 8 of TSCA that EPA may provide GSC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2001.

GSC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: September 1, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–25099 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5896–4]

Ozone, Particulate Matter and Regional Haze Implementation Programs Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: On September 11, 1995 (60 FR 47172), the EPA announced the establishment of the Ozone, Particulate Matter and Regional Haze Implementation Programs Subcommittee under the Clean Air Act Advisory Committee (CAAAC). The CAAAC was established on November 8, 1990 (55 FR 46993) pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. app I). The purpose of the Subcommittee is to provide advice and recommendations on integrated approaches for implementing potentially new national ambient air quality standards (NAAQS) for ozone and particulate matter, as well as a regional haze program.

DATES: Notice is hereby given that the Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs will hold its next public meeting on Thursday, October 9, 1997 (from 8:30 a.m. to 5:30 p.m.) and Friday, October 10, 1997 (from 8:30 a.m. to 2:00 p.m.).

ADDRESSES: The public meeting will be held at the Westin Michigan Avenue, 909 North Michigan Avenue, Chicago, Illinois, 60611, telephone (312) 943–7200.

FOR FURTHER INFORMATION CONTACT: For further information on the Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs, please contact Mr. William F. Hamilton, Designated Federal Officer, at 919–541–5498, or by mail at U.S. EPA, Office of Air Quality Planning and Standards, MD–15, Research Triangle Park, NC 27711. When a draft agenda is developed, a copy can be downloaded from the: (1) Ozone/Particulate Matter/Regional Haze FACA Bulletin Board, which is located on the Office of Air Quality Planning and Standards Technology Transfer Network (OAQPS TTN); (2) the OAQPS TTN Web Site (http://ttnwww.rtpnc.epa.gov); or (3) by contacting Ms. Denise M. Gerth at 919–541–5550.

Dated: September 15, 1997.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 97–25092 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5895–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Marco of Iota Superfund Site in Iota, Louisiana, with the following settling parties referenced in the Supplementary Information portion of this document.

The settlement requires the settling major parties to pay collectively $209,000.00, and the *De Minimis* parties to pay a combined total of $26,121.80 to the Hazardous Substances Superfund. The settlement is designed to resolve fully the settling parties' liability at the site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before October 22, 1997.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the Marco of Iota Superfund Site in Iota, Louisiana, and EPA Docket No. 06–07–97, and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Keith Smith, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–2157.

SUPPLEMENTARY INFORMATION: Fredeman Shipyard, Bodin Oil Recovery, B&B Oil Recovery, Rebel Energy, Atlantic Richfield, Francis Drilling Fluids, Ltd., Arco Oil & Gas, Betz Laboratories, Great Southern Oil & Gas, BASF Corporation, E.W. Saybolt.

Dated: September 16, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 97–25089 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5896–3]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Marco of Iota Superfund Site in Iota, Louisiana, with the following settling parties referenced in the Supplementary Information portion of this document.

The settlement requires the settling major party (Texaco, Inc.) to pay $703,600.81, and the *De Minimis* federal parties to pay a combined total of $25,337.63 to the Hazardous Substances Superfund. The settlement is designed to resolve fully the settling parties' liability at the site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before October 22, 1997.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the Marco of Iota Superfund Site in Iota, Louisiana, and EPA Docket No. 06–07–97, and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Keith Smith, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–2157.

SUPPLEMENTARY INFORMATION: Texaco, Inc., General Service Administration, U.S. Defense Logistics Agency/Defense Reutilization and Marketing Service, U.S. Department of Agriculture, U.S. Department of Defense/Army Corps of Engineers, U.S. Department of Defense/Department of the Army, U.S. Department of Transportation/Coast Guard, U.S. Department of Veterans Affairs/Department of Veterans Affairs Medical Centers.

Dated: September 10, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 97–25090 Filed 9–19–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, comments requested.

September 15, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments November 21, 1997.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

OMB Approval No.: 3060–0291.

Title: Section 90.477, Interconnected Systems.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; small businesses or organizations; state, local or tribal government.

Number of Respondents: 1,000.

Estimate Hour Per Response: 1 hour.

Frequency of Response: Recordkeeping and on occasion reporting requirement.

Total Annual Burden: 1000 hours.

Needs and Uses: This section allows private land mobile radio licensees to use common point telephone interconnection with telephone service costs distributed on a non-profit cost sharing basis. Records of such arrangements must be placed in the licensee's station records and made available to participants in the sharing arrangement and the Commission upon request.

OMB Approval No.: 3060–0224.

Title: Section 90.151, Requests for Waiver.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; small businesses or organizations; state, local or tribal government.

Number of Respondents: 60.

Estimate Hour Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 120 hours.

Needs and Uses: The Commission has the responsibility to establish and administer rules for the orderly and efficient use of the radio spectrum. Circumstances do arise, however, where general rules cannot properly address the needs of the public, and waiver of those rules is desirable. In order to enable the Commission to make an informed decision on the desirability of such waivers, applicants are required to submit information justifying why a waiver is needed.

OMB Approval No.: 3060–0226.

Title: Section 90.135(d) and (e), Modification of License.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; small businesses or organizations; state, local or tribal government.

Number of Respondents: 1,656.

Estimate Hour Per Response: .166 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 276 hours.

Needs and Uses: These rule paragraphs require licensees who have changed their name, address, number and location of station control points, number of mobile units, interconnection status, and/or sharing status to notify the Commission. This information collection applies only to licensees who elect to inform the Commission by letter of these changes. Licensees may also use forms to notify us of these changes. Notification is necessary to maintain an accurate database that is used by both the Commission, frequency coordinators and the public in corresponding with licensees regarding interference resolution and licensing matters.

OMB Approval No.: 3060–0281.

Title: Section 90.651, Supplemental Reports Required of Licensees Authorized Under this Subpart.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; small businesses or organizations; state, local or tribal government.

Number of Respondents: 16,408.

Estimate Hour Per Response: .166 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,724 hours.

Needs and Uses: The radio facilities addressed in this subpart of the rules are allocated on and governed by regulations designed to award facilities on a need basis determined by the number of mobile units served by each base station. This is necessary to avoid frequency hoarding by applicants. This rule section requires licensees to report the actual number of mobile units served. The various subparagraphs of this rule apply to different categories of licensees and define exactly what reports are required of each category.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 97–25122 Filed 9–19–97; 8:45 am]

BILLING CODE 6712–01–F

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 10:40 a.m. on Tuesday, September 16, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory and administrative enforcement activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Mr. John Downey, acting in place and stead of Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (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, NW., Washington, DC.

Dated: September 16, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 97–25149 Filed 9–17–97; 4:34 pm]

BILLING CODE 6714–01–M

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. The application also will 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. 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 October 16, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. SIS Bancorp, Inc., Springfield, Massachusetts; to acquire 100 percent of the voting shares of Glastonbury Bank and Trust Company, Glastonbury, Connecticut.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Popular, Inc., Hato Rey, Puerto Rico; to become a bank holding company by acquiring 100 percent of the voting shares of Houston Bancorporation, Inc., Houston, Texas, and thereby indirectly acquire Citizens National Bank, Houston, Texas.

C. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Coddle Creek Financial Corp., Mooresville, North Carolina; to become a bank holding company by acquiring Mooresville Savings Bank, SSB, Mooresville, North Carolina.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Citizens Financial Corp., Midwest City, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of U.S. National Bank, Midwest City, Oklahoma.

2. Griffin Investment, L.P., and Griffin General Partner, Inc., both of Cameron, Missouri; to become bank holding companies by acquiring 99.9 percent of the voting shares of Griffin Bancshares, Inc., Cameron, Missouri; and thereby indirectly acquire Pony Express Bank, Braymer, Missouri.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Olney Bancshares of Texas, Inc., Olney, Texas, and Olney Bancorp of Delaware, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of First National Bank of Borger, Borger, Texas; Citizens National Bank of Childress, Childress, Texas, and First State Bank of Canadian, N.A., Canadian, Texas, all *de novo* banks.

Board of Governors of the Federal Reserve System, September 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25016 Filed 9–19–97; 8:45 am]

BILLING CODE 6210–01–F

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. The application also will 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. 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 October 17, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Community National Corporation, Lexington, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank of Tennessee, Lexington, Tennessee, which is currently operating as the Lexington First Federal Savings Bank.

2. Peoples Bancorporation, Inc., Cuba, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Investment Corporation, Cuba, Missouri, and thereby indirectly acquiring Peoples Bank, Cuba, Missouri.

Board of Governors of the Federal Reserve System, September 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25119 Filed 9–19–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

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 § 225.28 of Regulation Y (12 CFR 225.28) 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. The notice also will 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.

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 October 17, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Norwest Corporation, Minneapolis, Minnesota; through its wholly-owned subsidiaries, Norwest Financial Services, Inc. and Norwest Financial, Inc., both of Des Moines, Iowa, to acquire Cityside Financial Services of Wisconsin, Inc., Cityside Savings & Financial Services, Co. and Cityside Insurance Company, Ltd., all of Eden Prairie, Minnesota, and thereby engage in consumer finance activities, pursuant to § 225.28(b)(1) of the Board's Regulation Y; in the sale of insurance related to extensions of credit as well as the reinsurance of such insurance, pursuant to §§ 225.28(b)(11)(i), (ii), and (vii) of the Board's Regulation Y; and in the operation of a nonbank depository institution, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25118 Filed 9–19–97; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0221]

Proposed Collection; GSA Board of Contract Appeals Rules Procedure

AGENCY: GSA Board of Contract Appeals (GSBCA), GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0221).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning GSA Board of Contract Appeals Rules Procedure.

DATES: Comment Due Date: November 21, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals, (202) 501–0272.

SUPPLEMENTARY INFORMATION: .

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0221, concerning GSA Board of Contract Appeals Rules Procedure. The GSBCA requires the information collected in order to conduct proceedings in contract appeals and petitions, and cost applications. Parties include those persons or entities filing appeals, petitions, and cost applications, and government agencies.

B. Annual Reporting Burden

Respondents: 86; annual responses: 86; average hours per response: .20; burden hours: 10.2.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: September 11, 1997.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 97–25051 Filed 9–19–97; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

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 or other forms of information technology.

1. Self-Evaluation and Recordkeeping Required by the Regulation Implementing Section 504 of the Rehabilitation Act of 1973 (45 CFR 84.6(c))—Extension—0990–0124—Recipients of DHHS funds must conduct a single-time evaluation of their policies and practices for compliance with Section 504 of the Rehabilitation Act of 1973. Recipients with fifteen or more employees must maintain records of their self-evaluation for three years. Respondents: State or local governments, businesses or other for-profit, non-profit institutions; Annual Number of Respondents: 545; Frequency of Response: once; Burden per Response: 80 hours; Total Annual Burden: 43,600 hours.

2. Uniform Relocation and Real Property Acquisition Under Federal and Federally-assisted Programs (45 CFR Part 15 and 49 CFR Part 24)—0990–0150—Extension—HHS has adopted standard government-wide regulations on acquisition of real property and relocation of persons thereby displaced. Federal agencies and State and local governments must maintain records of their displacement activities sufficient to demonstrate compliance with those regulations. Agencies may be required to file reports every three years (or more often with good cause) to permit Federal verification of compliance. Respondents: State or local governments; Annual Number of Respondents: one; Frequency of Response: once; Burden per Response: one hour; Total Annual Burden: one hour.

3. Annual Report for OPA Title X Family Planning Program Grantees—0915–0193—Extension—The Office of Family Planning (OPA) collects annual data from Title X Grantees to ensure compliance with legislative mandates, report to Congress, and identify areas where grantees may require assistance. Respondents: Title X Family Planning Program Grantees; Annual Number of Respondents: 87; Burden per Response: 16 hours; Total Annual Burden: 1,392 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: September 10, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–25072 Filed 9–19–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Diseases Transmitted Through the Food Supply

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice of annual update of list of infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

SUMMARY: Section 103(d) of the Americans with Disabilities Act of 1990, Public Law 101–336, requires the Secretary to publish a list of infectious and communicable diseases that are transmitted through handling the food supply and to review and update the list annually. The Centers for Disease Control and Prevention (CDC) published a final list on August 16, 1991 (56 FR 40897) and updates on January 13, 1994 (59 FR 1949), and August 15, 1996 (61 FR 42426). No new information that would warrant additional changes has been received; therefore the list, as set forth in the first update and below, remains unchanged.

EFFECTIVE DATE: September 22, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Morris E. Potter, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop A–38, Atlanta, Georgia 30333, telephone (404) 639–2237.

SUPPLEMENTARY INFORMATION: Section 103(d) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12113(d), requires the Secretary of Health and Human Services to:

1. Review all infectious and communicable diseases which may be transmitted through handling the food supply;
2. Publish a list of infectious and communicable diseases which are transmitted through handling the food supply;
3. Publish the methods by which such diseases are transmitted; and, .
4. Widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Additionally, the list is to be updated annually.

Since the last publication of the list on August 15, 1996 (61 FR 42426), CDC has received no further information to indicate that additional unlisted diseases are transmitted through handling the food supply. Therefore, the list set forth below is unchanged from the list published in the **Federal Register** on January 13, 1994:

I. Pathogens Often Transmitted by Food Contaminated by Infected Persons Who Handle Food, and Modes of Transmission of Such Pathogens

The contamination of raw ingredients from infected food-producing animals and cross-contamination during processing are more prevalent causes of foodborne disease than is contamination of foods by persons with infectious or contagious diseases. However, some pathogens are frequently transmitted by food contaminated by infected persons. The presence of any one of the following signs or symptoms in persons who handle food may indicate infection by a pathogen that could be transmitted to others through handling the food supply: diarrhea, vomiting, open skin sores, boils, fever, dark urine, or jaundice. The failure of food-handlers to wash hands (in situations such as after using the toilet, handling raw meat, cleaning spills, or carrying garbage, for example), wear clean gloves, or use clean utensils is responsible for the foodborne transmission of these pathogens. Non-foodborne routes of transmission, such as from one person to another, are also major contributors in the spread of these pathogens. Pathogens that can cause diseases after an infected person handles food are the following:

Hepatitis A virus
Norwalk and Norwalk-like viruses
Salmonella typhi
Shigella species
Staphylococcus aureus
Streptococcus pyogenes

II. Pathogens Occasionally Transmitted by Food Contaminated by Infected Persons Who Handle Food, but Usually Transmitted by Contamination at the Source or in Food Processing or by Non-Foodborne Routes

Other pathogens are occasionally transmitted by infected persons who handle food, but usually cause disease when food is intrinsically contaminated or cross-contaminated during processing or preparation. Bacterial pathogens in this category often require a period of temperature abuse to permit their multiplication to an infectious dose before they will cause disease in consumers. Preventing food contact by persons who have an acute diarrheal illness will decrease the risk of transmitting the following pathogens:

Campylobacter jejuni
Entamoeba histolytica
Enterohemorrhagic *Escherichia coli*
Enterotoxigenic *Escherichia coli*
Giardia lamblia
Nontyphoidal *Salmonella*
Rotavirus
Taenia solium
Vibrio cholerae 01
Yersinia enterocolitica

References

1. World Health Organization. Health surveillance and management procedures for food-handling personnel: report of a WHO consultation. World Health Organization technical report series; 785. Geneva: World Health Organization, 1989.
2. Frank JF, Barnhart HM. Food and dairy sanitation. In: Last JM, ed. Maxcy-Rosenau public health and preventive medicine, 12th edition. New York Appleton-Century-Crofts, 1986:765–806.
3. Bennett JV, Holmberg SD, Rogers MF, Solomon SL. Infectious and parasitic diseases. In: Amler RW, Dull HB, eds. Closing the gap: the burden of unnecessary illness. New York: Oxford University Press, 1987:102–114.
4. Centers for Disease Control. Locally acquired neurocysticercosis—North Carolina, Massachusetts, and South Carolina, 1989–1991. MMWR 1992; 41:1–4.

Dated: September 15, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–25053 Filed 9–19–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0380]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 22, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Importer's Entry Notice (OMB Control Number 0910–0046—Extension)

Section 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381) charges FDA with the responsibility for assuring that foreign-origin FDA-regulated foods, drugs, cosmetics, medical devices, and radiological health products offered for import into the United States meet the same requirements of the act as do domestic products, and for preventing shipments from entering the country if they are not in compliance.

The information collected by FDA consists of the following: Product code, an alpha-numeric series of characters that identifies each product FDA regulates; FDA country of origin, the country where the FDA-registered or FDA-responsible firm is located; FDA manufacturer, the party who manufactured, grew, assembled, or otherwise processed the goods (if more than one, the last party who substantially transformed the product); shipper, the party responsible for packing, consolidating, or arranging the shipment of the goods to their final destination; quantity and value of the shipment; and, if appropriate, affirmation of compliance, a code that conveys specific FDA information, such as registration number, foreign government certification, etc. This information is collected electronically by the entry filer via the U.S. Customs' Automated Commercial System at the same time he/she files an entry for import with the U.S. Customs Service. FDA uses the information to make admissibility decisions about FDA-regulated products offered for import into the United States.

FDA estimates the burden of this collection of information as follows:

TABLE I.—ESTIMATED ANNUAL REPORTING BURDEN

No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
2,505	1,212.54	3,037,426	0.07	229,693

There are no capital costs or operating and maintenance costs associated with this collection.

The source of the estimate for the number of respondents is the number of importers who submitted entry data for foreign-origin FDA-regulated products in 1996. The estimated reporting burden is based on information obtained by contacting several past respondents.

Dated: September 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–25020 Filed 9–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Cooperative Agreement With the National Association of People With AIDS

The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau announces that it will enter into an umbrella cooperative agreement with the National Association of People with AIDS (NAPWA).

The purpose of this cooperative agreement is to assist NAPWA in expanding and enhancing its HIV training and technical assistance activities with the ultimate goal of improving the health status and access to care for people infected with or affected by HIV/AIDS. Activities will include but not be limited to developing materials, guides, and conferences for HRSA's Ryan White programs. HRSA will provide consultation, including administrative and technical assistance as needed, for the execution and evaluation of all aspects of this cooperative agreement. HRSA will also participate and/or collaborate with the NAPWA in any workshops or symposia to exchange current information, opinions, and research findings to the Ryan White grantees during this agreement.

Authorizing Legislation

This cooperative agreement is authorized under Section 2692 of the PHS Act.

Background

Assistance will be provided to the National Association of People with AIDS. No other applications are solicited. NAPWA 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 programs within local communities and organizations that deal extensively with individuals most directly affected by the HIV/AIDS epidemic. The association 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 health programs for Ryan White grantees aimed at preventing and reducing unnecessary morbidity and mortality rates.

2. Established itself and its members as a national association of people affected by HIV/AIDS 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 HIV-infected individuals with a range of HIV-related health and social problems. NAPWA has worked with the Federal Government, academic institutions, and health groups on mutually beneficial education, research, and health endeavors relating to the goal of reducing HIV-related mortality and has the national leadership needed to assist Ryan White health care professionals to work more effectively with people living with HIV/AIDS.

4. Developed national network of individuals, community-based organizations, and state, regional, and national health and civil rights organizations committed to addressing the HIV service, treatment, and research needs of individuals affected and infected by HIV and AIDS.

Approximately $200,000 is available in fiscal year (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 Joan Holloway, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7–13, Rockville, Maryland 20857 or telephone (301) 443–9530.

Dated: September 15, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–25019 Filed 9–21–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Cooperative Agreement With the National Minority AIDS Council

The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau 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.

The purpose of this cooperative agreement is to assist NMAC in expanding and enhancing its HIV training and technical assistance to Ryan White Comprehensive AIDS Resources Emergency (CARE) Act providers servicing racial and ethnic minority populations, with the ultimate goal of improving the health status of minorities and disadvantaged people. HRSA will provide consultation, including administrative and technical assistance as needed, for the execution and evaluation of all aspects of this cooperative agreement. Activities will include but not be limited to developing materials, guides, and conferences for HRSA's Ryan White programs. HRSA will also participate and/or collaborate with the NMAC in any workshops or symposia to exchange current information, opinions, and research findings during this agreement.

Authorizing Legislation

This cooperative agreement is authorized under Section 2692 of the PHS Act.

Background

Assistance will be provided 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 programs within local communities and organizations that deal extensively with HIV in each of the ethnic minority populations served by the Ryan White CARE Act programs of HRSA. 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 health programs aimed at preventing and reducing unnecessary morbidity 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 ethnic 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 Ryan White 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 service, treatment, and research needs of individuals effected and infected by HIV and AIDS.

Approximately $200,000 is available in fiscal year (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 Joan Holloway, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7–13, Rockville, Maryland 20857 or telephone (301) 443–9530.

Dated: September 15, 1997.

Claude E. Fox,

Acting Administrator.

[FR Doc. 97–25017 Filed 9–19–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Review Criteria for Grants for the National Research Service Awards: Primary Care Research for Fiscal Year 1998

The Health Resources and Services Administration (HRSA) National Research Service Awards: Primary Care Research (NRSA) institutional training grants (T32) are provided to accredited public or private nonprofit schools of medicine, osteopathy, dentistry, or a public or private nonprofit hospital or other entity which is affiliated with an entity that has received grants or contracts under section 747, 748, or 749 of the PHS Act, agrees to use the funding for research in primary medical care, and is located in a State. The NRSA program is authorized by Title IV, Section 487(d)(3)(A) of the Public Health Service Act.

Proposed Review Criteria

The following criteria are proposed for National Research Service Awards in primary care research:

1. Program Characteristics

Objectives, design, and direction of the research training program—including the probability of achieving stated goals.

Substantive and methodological content of the proposed program and its relevance to the Program Objectives noted above, including relevant descriptions of courses and experiential opportunities offered and/or required.

The extent to which proposed approaches address areas in need of research given changes in the health care delivery system.

2. Program Support and Organizational Structure and Plans

The institutional training environment, including the level of institutional commitment, quality of the facilities, availability of appropriate courses, and availability of research support.

Caliber of preceptors as researchers, including successful research support.

Organizational structure of the proposed training program, including delineation of administrative responsibilities for planning, oversight, and evaluation.

Demonstration of cooperation by any proposed collaborating facilities, institutions, or departments in providing research experiences and/or sites for trainees, including (where applicable) documentation of mechanisms by which trainees will be integrated into the ongoing primary medical care research activities of other entities.

When appropriate, the concomitant research training of health-professional postdoctorates (e.g., individuals with the M.D., D.O., D.D.S./D.M.D., etc.) with basic science postdoctorates (e.g., individuals with a Ph.D., etc.) or linkages with basic science department.

Demonstration of extent to which and ways in which HRSA support will be (has been in the past) leveraged through the use of other Federal and private resources to maximize primary medical care research training within the institution.

Availability of other relevant support.

3. Trainee Recruitment & Retention Plans

Recruitment and selection plans for trainees and the availability of high-quality candidates, including minority trainees (see below for details).

When appropriate, record of the research training program in retaining health-professional postdoctoral trainees for at least 2 years in research training or other research activities.

4. Program Record and Evaluation Plans

Past research training record of both the program and the designated preceptors as determined by the success of former trainees in seeking further career development and in establishing productive scientific careers. Evidence of further career development can include receipt of fellowships, career awards, a prestigious training appointment, and similar accomplishments. Evidence of a productive scientific career can include a record of successful competition for individual research grants, receipt of special honors, a record of publications, receipt of patents, promotion to prestigious positions in academe, industry, or health policy and any other appropriate measure of success consistent with the nature and duration of the training received.

Record of the research training program in recruiting and retaining trainees, noting past annual success rates in filling committed slots.

Proposed methods for monitoring and evaluating performance of trainees and the overall program, record of trainees in obtaining individual research awards or fellowships following training, and in establishing careers in primary medical care research.

5. Budget

Reasonableness of the proposed budget, including number and levels of trainees, in relation to the research training.

An announcement will be made in the *HRSA Preview* for the competitive cycle in FY 1998.

The comment period is 30 days. All comments received on or before October 22, 1997 will be considered before the final review criteria are established. Written comments should be addressed to: Enrique Fernandez, M.D., Division of Medicine, Bureau of Health Professions, Health Resources and Services, Administration, Parklawn Building, Room 9A–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–1467, FAX: (301) 443–8890.

All comments received will be available for public inspection and copying at the Division of Medicine, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: September 15, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–25018 Filed 9–19–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Federal Workplace Drug Testing Programs and Associated Forms: Extension of OMB Approval

The Office of Management and Budget (OMB) has approved the use of the Federal Custody and Control Form (CCF) until July 31, 2000, for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29908) dated June 9, 1994, and for the information provided by laboratories for the National Laboratory Certification Program (NLCP).

The OMB approval requires that OMB Number 0930–0158 must be displayed in the upper right hand corner of the Federal Custody and Control Form, but the expiration date does not need to appear on the CCF. Additionally, the following Paperwork Reduction Act Notice must appear on the back of each copy of the CCF: Paperwork Reduction Act Notice (as required by 5 CFR 1320.21). Public reporting burden for this collection of information, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated for each respondent to average: 5 minutes/donor; 4 minutes/collector; 3 minutes/laboratory; and 3 minutes/Medical Review Officer. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the SAMHSA Reports Clearance Officer, Paperwork Reduction Project (0930–0158), Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0930–0158.

Until current supplies are exhausted, Federal agencies and federally regulated industries are permitted to use Federal Custody and Control Forms that display the previous OMB Number, expiration date (6/30/97), and paperwork reduction act statement.

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: September 15, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–25113 Filed 9–19–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–25]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: November 21, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ben Jacinto, Telephone number (202) 708–2866 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Notice is soliciting comments from members of the public and 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.

This Notice also lists the following information:

Title of Proposal: HUD Survey Instructions and Report for Insured Multifamily Projects.

OMB Control Number: 2502–0010.

Description of the Need for the Information and Proposed Use: Form HUD–2457, HUD Survey Instructions and Report For Insured Multifamily Projects, is required to assure that land surveys and survey maps: are appropriate for marketable title and title insurance; identify elements of regulatory concern, e.g., flood hazard, for the property offered as security for mortgage insurance; and where new construction or regarding are applicable, provide necessary data for proper site design. Form HUD–2457 is also used by the surveyor to flag site features and exceptions to title having significant bearing on site suitability and value for the intended purpose, and to certify to the surveyor's site visit to verify the continuing accuracy of older surveys and redated survey maps submitted in conjunction with applications for mortgage insurance and loan closing transactions. Form HUD–2457 is essential to the multifamily housing programs for the above reasons, and it is also highly beneficial to sponsors and surveyors involved in the delivery of projects under such programs. It defines the survey standards and requirements to meet HUD criteria for various types of projects and project circumstances and may be used as a specification for a purchase order between the project sponsor and surveyor. It also permits the surveyor to more readily determine survey and related fees and charges for mortgagor applications under various FHA programs, and provides for the surveyor's certification regarding conduct of the survey in accordance with the prescribed standards and requirements. Program regulations, 24 CFR 200.61(b), state ''Title evidence for the Commissioner's examination shall include a lender's title insurance policy, which title policy provides survey coverage based on a survey acceptable to the title company and the Commissioner; or as the Commissioner may otherwise require, in accordance with terms, conditions and standards established by the Commissioner.''

Agency Form Numbers: HUD 2457.

Member of Affected Public: Approximately 750 respondents per year are estimated with an average of two submissions per project for 1500 annual submissions, each requiring ½ hour to complete and handle.

Status of The Proposed Information Collection: Reinstatement with change. The changes include: use of industry rather than HUN standards of performance in great part, identifying survey related program criteria in a single location to better inform industry participants, revision of the surveyor's certification requirements to recognize current professional liability underwriting practices and making the document more user friendly.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 16, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–25045 Filed 9–19–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–00–0777–30]

Call for Nominations for Resource Advisory Councils; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public nominations for the Bureau of Land Management (BLM) Northeastern Great Basin Resource Advisory Councils in Nevada. This Council provides advice and recommendations to BLM on land use planning and management of the public lands within Lander, Eureka, Elko and White Pine Counties in Nevada. Public nominations will be considered for 30 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council members appointed to the council must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

Category One—holders of federal grazing permits, representatives of energy and mining development, timber industry, off-road vehicle use and developed recreation;

Category Two—representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups;

Category Three—representatives of State and Local government, Native American tribes, academicians involved in natural sciences, and the public-at-large.

The position for which nominations are sought represents wild horse interests in category two. Individuals may nominate themselves or others. Nominees must be residents of Nevada or that portion of California managed by Nevada Offices of the Bureau of Land Management. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

DATE: All Nominations should be received by the Nevada State Office by October 20, 1997.

ADDRESSES: Nominations should be sent to the BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Daniel Rathbun, BLM Nevada State Office, 702–785–6767.

Dated: September 11, 1997.

Donette Gordon,

Acting State Director.

[FR Doc. 97–25047 Filed 9–19–97; 8:45 am]

BILLING CODE 4130–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–07–1220–00]

Restrictions on Public Land; San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of use restrictions.

SUMMARY: In order to decrease conflict between recreationists, maintain quality trail recreation experiences, protect non-recreation resources, and better provide for the safety of the public, use restrictions are announced by the Farmington District. Effective immediately, the discharge of any type of firearm, the use of any off-highway vehicle, or any overnight camping is restricted on the Public Land within the Glade Run Trail System. These restrictions are based on the Decision Record for Environmental Assessments NM070–95–3219 and NM070–95–3220, and related planning documents: the Farmington Resource Management Plan Off-Highway Vehicle Amendment and the Glade Run Trail System Recreation Area Management Plan.

SUPPLEMENTARY INFORMATION (SHOOTING RESTRICTIONS): Since the discharge of firearms presents both a safety hazard to and recreational conflict with other users of Public Lands, the discharge of firearms is restricted on approximately 23,310 acres as described below in the following areas of high recreation use:

The discharge of firearms is prohibited on:

New Mexico Principal Meridian

T. 30 N., R. 12 W.,
Sec. 4: lots 5–17: those portions southwest of the Flora Vista Road;
Sec. 5: lots 5–20;
Sec. 6: lots 8–23;
Sec. 7: lots 5–20;
Sec. 8: lots 1–16;
Sec. 9: lots 1–11: those positions southwest of the Flora Vista Road;
Sec. 10: lots 4, 5, 8, 9: those portions southwest of the Flora Vista Road;
Sec. 15: lots 1, 2;
Sec. 17: lots 1–16;
Sec. 19: lots 1–3.
T. 30 N., R. 13 W.,
Sec. 1: lots 1–4, S½N½, S½;
Sec. 3: lots 1–4, S½N½, S½;
Sec. 4: lots 1–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼: those portions farther than ½ mile from the La Plata River;
Sec. 9: E½, E½W½, NW¼NW¼: those portions farther than ½ mile from the La Plata River;
Sec. 10: All;
Sec. 11: N½, N½S½, S½SW¼;
Sec. 12: All;
Sec. 13: E½, E½W½, SW¼NW¼, W½SW¼;
Sec. 14: NE¼N½W¼, W½NW¼, E½SW¼, NW¼SW¼, SE¼;
Sec. 15: All;
Sec. 21: E½;
Sec. 22: N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 23: E½, S½NW¼, SW¼;
Sec. 24: All;
Sec. 25: N½, N½S½, S½SE¼;
Sec. 26: NW¼NE¼NW¼;
Sec. 27: NW¼NW¼SE¼, SE¼SE¼;
Sec. 28: W½SW¼;
Sec. 32: E½NE¼;
Sec. 33: N½NE¼, SW¼NE¼, N½SE¼NE¼, NW¼;
Sec. 34: NE¼NW¼.
T. 31 N., R. 12 W.,
Sec. 30: lots 5–17: those portions southwest of the Flora Vista Road;
Sec. 31: lots 5–8, SE¼NE¼, E½SE¼, SW¼SE¼: those portions southwest of the Flora Vista Road.
T. 31 N., R. 13 W.,
Sec. 23: E½, NE¼NW¼, S½SW¼: those portions southwest of the Flora Vista Road and farther than ½ mile from the La Plata River;
Sec. 24: All that portion southwest of the Flora Vista Road;
Sec. 25: All that portion southwest of the Flora Vista Road;
Sec. 26: lots 1–8, NE¼, SW¼: those portions farther than ½ mile from the La Plata River;
Sec. 27: lots 1, 2, SE¼SW¼, SE¼: those portions farther than ½ mile from the La Plata River;
Sec. 34: All;
Sec. 35: lots 1–4, E½, SW¼.

The discharge of firearms is prohibited with the exception of licensed hunters of game birds (with shotguns only) during season on:

New Mexico Principal Meridian

T. 30 N., R. 12 W.,
Sec. 3: lots 8, 9, 16, 17;
Sec. 4: lots 5–17: those portions northeast of the Flora Vista Road;
Sec. 9: lots 1–11: those portions northeast of the Flora Vista Road;
Sec. 10: lots 4, 5, 8, 9: those portions northeast of the Flora Vista Road.
T. 30 N., R. 13 W.,
Sec. 4: lots 1–4, S½NE¼, SE¼NW¼, E½SW¼: those portions less than ½ mile from the La Plata River;
Sec. 8: NE¼NE¼;
Sec. 9: E½, E½W½, NW¼NW¼: those portions less than ½ mile from the La Plata River.
T. 31 N., R. 12 W.,
Sec. 9: S½;
Sec. 10: SW¼ where south or west of (and including) SR 574;
Sec. 14: lots 9 and 10 where south of (and including) SR 574 and west of (and including) right-of-way NM32047;
Sec. 15: lots 3, 4, and 5 where south or west of (and including) SR 574, lots 6–12, NW¼ where south or west of (and including) SR 574;
Sec. 17: All that portion east of north-south dirt road (right-of-way NM032315) or east of a line approximately ½ mile west of the western ridge above the Farmington Glade arroyo;
Sec. 19: lots, 1,2, 5–12, NE¼, E½NW¼: those portions east of a line approximately ½ mile west of the western ridge above the Farmington Glade arroyo;
Sec. 20: lots 1–6, N½: those portions east of a line approximately ½ mile west of the western ridge above the Farmington Glade arroyo;
Sec. 21: NE¼NE¼, S½NE¼, W½NW¼, SE¼SW¼, SE¼;
Sec. 22: lots 1–16;
Sec. 27: All;
Sec. 28: All;
Sec. 29: E½, N½NW¼, E½SW¼;
Sec. 30: lots 5–17: those portions east of a line approximately ½ mile west of the western ridge above the Farmington Glade arroyo and northeast of the Flora Vista road;
Sec. 31: lots 5–8, SE¼NE¼, E½SE¼, SW¼SE¼: those portions northeast of the Flora Vista Road;
Sec. 33: All;
Sec. 34: All west of grazing allotment fence line.
T. 31 N., R. 13 W.,
Sec. 23: E½, NE¼NW¼, S½SW¼: those portions southwest of the Flora Vista Road and less than ½ mile from the La Plata River;
Sec. 26: lots 1–8, NE¼, SW¼: those portions less than ½ mile from the La Plata River;
Sec. 27: lots 1, 2, SE¼SW¼, SE¼: those portions less than ½ mile from the La Plata River;
Sec. 33: SE¼NE¼, SE¼SW¼, SE¼;
Sec. 34: All those portions less than ½ mile from the La Plata River.

SUPPLEMENTARY INFORMATION (OHV RESTRICTIONS): Since the uncontrolled use of off-highway vehicles in an area designated ''open'' degrades many of the experiences sought in trail-based recreation as well as jeopardizes cultural sites and populations of plant species of special concern in the area, the use of all motorized and mechanical vehicles is limited to designated routes on approximately 22,800 acres as described below:

New Mexico Principal Meridian

T. 30 N., R. 12 W.,
Sec. 3: lots 8, 9, 16, 17;
Sec. 4: lots 5–17;
Sec. 5: lots 5–20;
Sec. 6: lots 8–23;
Sec. 7: lots 5–20;
Sec. 8: lots 1–16;
Sec. 9: lots 1–11;
Sec. 10: lots 4, 5, 8, 9;
Sec. 15: lots 1, 2;
Sec. 17: lots 1–16;
Sec. 19: lots 1–3.
T. 30 N., R. 13 W.,
Sec. 1: lots 1–4, S½N½, S½;
Sec. 3: lots 1–4, S½N½, S½: those portions north of right-of-way NM055655;
Sec. 4: lots 1–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8: NE¼NE¼;
Sec. 9: E½, E½W½, NW¼NW¼: those portions north of rights-of-way NM055655 and NM42874;
Sec. 10: All portions north of right-of-way NM055655;
Sec. 11: N½, N½S½, S½SW¼: those portions east of right-of-way NM35788;
Sec. 12: All;
Sec. 13: E½, E½W½, SW¼NW¼, W½SW¼: those portions north of right-of-way NM0558055 and the dirt road extension that connects this with right-of-way NM0557933 in Section 14;
Sec. 14: NE¼N½W¼, W½NW¼, E½SW¼, NW¼SW¼, SE¼: those portions north or east of rights-of-way NM0128657, NM0557933, and the dirt road extension that connects these with right-of-way NM0558055 in Section 13;
Sec. 15: All portions north of right-of-way NM0128657 and east of right-of-way NM35788;
Sec. 23: E½, S½NW¼, SW¼: those portions southeast of the Hood Mesa Road;
Sec. 24: All portions southeast of the Hood Mesa Road or northeast of right-of-way NM0558055;
Sec. 25: N½, N½S½, S½SE¼.
T. 31 N., R. 12 W.,
Sec. 7: S½;
Sec. 9: S½;
Sec. 10: SW¼ where south or west of (and including) State Route 574;
Sec. 14: lots 9 and 10 where south of (and including) State Route 574 and west of (and including) right-of-way NM32047;
Sec. 15: lots 3, 4, and 5 where south or west of (and including) State Route 574, lots 6–12, NW¼ where south or west of (and including) State Route 574;
Sec. 17: All;
Sec. 18: lots 1–4, E½, E½W½;
Sec. 19: lots 1, 2, 5–12, NE¼, E½NW¼;
Sec. 20: lots 1–6, N½;
Sec. 21: NE¼NE¼, S½NE¼,W½NW¼, SE¼SW¼, SE¼;
Sec. 22: lots 1–16;
Sec. 27: All;
Sec. 28: All;
Sec. 29: E½, N½NW¼, E½SW¼;
Sec. 30: lots 5–17;
Sec. 31: lots 5–8, SE¼NE¼, E½SE¼, SW¼SE¼;
Sec. 33: All;
Sec. 34: All west of grazing allotment fence line.
T. 31 N., R. 13 W.,
Sec. 12: All;
Sec. 13: All;
Sec. 14: SE¼;
Sec. 23: E½, NE¼NW¼, S½SW¼;
Sec. 24: All;
Sec. 25: All;
Sec. 26: lots 1–8, NE¼, SW¼;
Sec. 27: lots 1, 2, SE¼SW¼, SE¼;
Sec. 33: SE¼NE¼, SE¼SW¼, SE¼;
Sec. 34: All;
Sec. 35: lots 1–4, E½, SW¼.

SUPPLEMENTARY INFORMATION (CAMPING): Since unrestricted camping in an area of such high recreational use and other resource values creates conflicts and degrades resources as well as experiences, a permit from the Farmington District Office is required for all overnight camping on any of the approximately 27,400 acres described above. Authority for these closures is found in 43 CFR 8364. Any person who fails to comply with a closure issued under 43 CFR 8364 may be subject to the penalties provided in 43 CFR 8360.0–7: violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Christopher Barns, BLM Farmington District Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401; 505–599–6300.

Dated: September 16, 1997.

Lee Otteni,

District Manager, Farmington District.

[FR Doc. 97–25057 Filed 9–19–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations for Mining Operations; JO Claim Group, Death Valley National Park, Inyo & San Bernardino Counties, CA, Esmeralda & Nye Counties, NV

Notice is hereby given in accordance with Section 9.17(a) of Title 36 of the Code of Federal Regulations, Part 9, Subpart A, that the National Park Service has received from Mr. Joe Ostrenger a Plan of Operations conduct mining operations on the JO claim group in Death Valley National Park.

The Plan of Operations is available for public review and comment for a period of 30 days from the publication of this notice. Analysis of the proposal will proceed from the date of its receipt. The document can be viewed during normal business hours at the Office of the Superintendent, Death Valley National Park, Death Valley, California.

Dated: August 28, 1997.

Richard H. Martin,

Superintendent.

[FR Doc. 97–25046 Filed 9–19–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 13, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 7, 1997.

Beth Boland,

Acting Keeper of the National Register.

Arizona

Maricopa County, Phoenix Elementary School District No. 1 Administration Building (Educational Buildings in Phoenix MPS) 331 N. First Ave., Phoenix, 95001076.

Navajo County, Arizona Rancho, Jct. of Tovar and Apache Sts., Holbrook, 97001210.

California

Kern County, Shafter Research Station, 17053 Shafter Ave., Shafter vicinity, 97001211.

Los Angeles County, Bekins Storage Co. Roof Sign, 511 S. Fair Oaks Ave., Pasadena, 97001212.

Colorado

Denver County, Railway Exchange Addition and Railway Exchange New Building, 1715 Champa St. and 909 17th St., Denver, 97001213.

Florida

Collier County, Horr, Capt. John Foley House, N side of Whiskey Creek Dr., Key Marco vicinity, 97001215.

Duval County, Lewis Mausoleum, Memorial Cemetery, jct. of Edgewood

Ave. and Noncreif Rd., Jacksonville, 97001225.
Orange County, Eatonville Historic District, Roughly bounded by Wymore Rd., Eaton St., Fords, and East Aves., Ruffel, and Clark Sts., Eatonville, 97001214.
Palm Beach County, American National Bank Building, 114 S. Olive Ave., West Palm Beach, 97001217.
Sarasota County, Johnson Chapel Missionary Baptist Church, 506 Church St., Laurel, 97001218.
Volusia County, Kilkoff House, 1145 W. New York Ave., Deland, 97001216.
Mount Taylor, Address Restricted, Volusia/Delon Springs vicinity, 97001219.

Montana

Missoula County, Dixon—Duncan Block (Historic Resources in Missoula, 1864–1940, MPS) 232–240 N. Higgins Ave., Missoula, 90000654.

North Carolina

Gaston County, Beam's Shell Service Station and Office, (Former), 117 N. Mountain St., Cherryville, 97001221.
Northampton County, Woodland—Olney School, Main St., E of jct. of Magnolia and Main Sts., Woodland, 97001222.
Pitt County, Moye, Jesse R., House, 408 W. Fifth St., Greenville, 97001220.

Ohio

Cuyahoga County, Pennsylvania Railway Ore Dock, On Lake Erie at Whiskey Island, Cleveland, 95000492.
Hamilton County, Alexandra, The, 921 E. William H. Taft Rd., Cincinatti, 97001223.
Lucas County, Lucas County Hospital and Nurse's Home, 2101 and 2155 Arlington Ave., Toledo, 97001224.

[FR Doc. 97–25060 Filed 9–19–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Adaptive Management Work Group (AMWG) on September 10, 1997. The TWG members were named by the members of the AMWG and will provide advice and information to the AMWG to act upon. The AMWG will use this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center science program and other direction as requested by the Secretary. All meetings are open to the public, however, seating is limited and is available on a first come, first served basis.

DATES AND LOCATION: The TWG public meetings will be held at the following times and locations.

Phoenix, Arizona—There will be three two-day public meetings on October 2 and 3, 1997, November 4 and 5, 1997, and December 11 and 12, 1997. Each one of the two day meetings will begin at 9:30 am on the first day and conclude at 4:00 pm on the second day. The meetings will be held at the LaQuinta Inn, 2510 W Greenway Road, Phoenix, Arizona.

Any organization or individual wishing to make formal oral comments (limited to 10 minutes) at the meeting must provide written notice to Mr. Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102 or via telephone (801) 524–3702; fax (801) 524–4599; or via E-mail at: bmoore@uc.usbr.gov at least five days prior to the meetings. Written comments will be provided to the TWG members at the meetings.

AGENDA: The Agenda for each meeting will be as follows:.

Welcome
Monitoring and Research Plans for FY 1999
Maintenance and Beach Habitat Building Flows
Annual Report to Congress
Management Objectives
Resource Management Questions and Objections

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, phone (801) 524–3702; fax (801) 524–5499; or via E-mail at: bmoore@us.usbr.gov.

Dated: September 19, 1997.

R. Steve Richardson,

Acting Commissioner.

[FR Doc. 97–25022 Filed 9–19–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Request Emergency Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; Revision of a currently approved collection—Department annual report.

Approval for an emergency extension has been requested from the Office of Management and Budget (OMB) for the information collection listed below. The emergency extension has been requested for 60 days in order to allow the public 30 days to comment on the information collection and take corrective actions if required. The 60 day notice was previously published in the **Federal Register** on March 24, 1997.

Comments are encouraged and will be accepted until October 22, 1997. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office and Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

Written comments and suggestions from the public and affected agencies should address one of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technique other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Department Annual Report

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 1103–0031. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: State, Local or Tribal Governments. Other: None.

The information collected is used to determine grantee progress on its COPS Hiring grant. Completion of such report is a condition of all COPS hiring programs. The COPS Office achieves the goals hiring of the crime bill by offering the Universal Hiring grant program. It is designed to assist with the implementation of community policing by providing funding for up to $75,000 of the salaries and benefits of newly hired officers for a three year period. Throughout the grant period, law enforcement agencies are expected to plan, in good faith, to retain the funded positions through full local funding.

As the COPS Office's grants mature, it is important that it monitor the progress of this good faith planning for retention. Thus, the COPS Office has expanded its Department Annual Report by adding a question specific to retention planning. The remainder of the information collected under the previously approved [1] Department Annual Report will remain the same: questions aimed at collecting the minimum information necessary to monitor the progress of law enforcement agencies as successfully hiring their COPS funded officers and implementing community policing as they indicated they would in their grant application. With the anticipated OMB approval of the revised Department Annual Report, the COPS Office will retire its predecessor from dissemination to its grantees.

The information collected in the Department Annual Report will continue to be collected once per year so long as the law enforcement agency receives COPS program hiring monies. The Instruments will be mailed to the grantees with instructions and a sample completed Progress Report Document.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 10,000 responses; 1.3 hours per response. The information will be collected one time per year from each respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 38,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

[1] OMB Approval Number 1103–0030.

Dated: September 16, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–25058 Filed 9–19–97; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Mid-America Dairymen, Inc., Southern Foods Group LP, and Milk Products LLC

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Texas in *United States* v. *Mid-America Dairymen, Inc., Southern Foods Group LP, and Milk Products, LLC,* Civil No. 3:97 CV 2162–P. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h).

On September 3, 1997, the United States filed a Complaint seeking to enjoin a transaction in which Mid-America Dairymen, Inc. (''Mid-America'') would acquire the voting stock of Borden/Meadow Gold Dairies Holdings, Inc. (''Borden/Meadow Gold''). Mid-America, through its affiliate Southern Food Group LP (''Southern Foods''), and Borden/Meadow Gold are two of the primary, and often the only, bidders to supply milk to school districts in Eastern Texas and Louisiana, and this transaction would have combined them to create a monopoly in many of those school districts. The Complaint alleged that the proposed acquisition would substantially lessen competition in providing milk to school districts in Eastern Texas and Louisiana in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

The proposed Final Judgment orders Mid-America to sell the Texas, Louisiana and New Mexico assets to be acquired from Borden/Meadow Gold and, to the extent it sells them to a purchaser who has already agreed to buy them (Milk Products LLC), to limit the financing that Mid-America had agreed to provide to the purchaser. In the event Mid-America does not sell to that purchaser, it must divest the assets to a purchaser who has the capability to compete effectively in the manufacture, sale and distribution of dairy products in New Mexico, Texas and Louisiana. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

The public is invited to comment within the statutory 60-day comment period. Written comments should be addressed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530 (telephone: (202) 307–6351). Comments must be received within 60 days. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court.

Copies of the Complaint, Stipulation, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Washington, D.C. 20530 (telephone: (202) 514–2481), and at the office of the Clerk of the United States District Court for the Northern District of Texas, 1100 Commerce Street, Dallas, Texas 75242. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Stipulation and Order

It is stipulated by and between the undersigned parties, through their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Northern District of Texas.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. The defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry

of the Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment and shall, from the date of signing of this Stipulation, comply with all terms and provisions of the proposed Final Judgment thereof as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event plaintiff United States withdraws its consent, as provided in Paragraph 2, above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the Final Judgment and if the Court has not otherwise ordered continued compliance with the terms and provision of the Final Judgment, then the parities are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that they will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

7. The parties request that the Court acknowledge the terms of this Stipulation by entering the Order in this Stipulation and Order.

Respectfully submitted.

For Plaintiff United States of America:

Joel I. Klien,

Assistant Attorney General.

A. Douglas Melamed,

Deputy Assistant Attorney General.

Roger W. Fones,

Chief, DC Bar # 303255.

Donna N. Kooperstein,

Assistant Chief, PA Bar # 26770.

Joan S. Huggler,

DC Bar # 927244.

Michael P. Harmonis,

PA Bar # 17994.

Robert D. Young,

DC Bar # 248260.

Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St. N.W., Washington, D.C., (202) 307–6456, (202) 616–2441.

Dated: September 2, 1997.

For Defendant Mid-America Dairymen, Inc.

W. Todd Miller,

DC Bar # 414930.

Baker & Miller PLLC, Suite 615, 700 Eleventh Street, NW, Washington, D.C. 20001, (202)–637–9499, (202–637–9394 (Facsimile).

Attorneys for Mid-America Dairymen, Inc.

Dated: September 2, 1997.

For Defendant Southern Foods Group LP:

Jerry L. Beane,

TX Bar #01966000.

Strasburger & Price LLP, Suite 4300, 901 Main Street, Dallas, Texas 75202, (214–651–4521), (214)–651–4330 (Facsimile).

Attorneys for Southern Foods Group LP

Dated: September 2, 1997.

For Defendant Milk Products LLC:

Jerry L. Beane,

TX Bar #01966000.

Strasburger & Price LLP, Suite 4300, 901 Main Street, Dallas, Texas 75202, (214–651–4521), (214)–651–4330 (Facsimile).

Attorneys for Milk Products LLC

Dated: September 2, 1997.

Upon Review of this Stipulation by the parties, the Court acknowledges by this Order that the parties have consented to the terms specified in this Stipulation and the entry of the Final Judgment subject to the provisions of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16 (b)–(h)).

So Ordered on this ________ day of ________________, 1997.

____

United States District Court Judge

Final Judgment

Whereas, plaintiff, United States of America (hereinafter ''United States''), having filed its complaint herein on September 3, 1997, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, prompt and certain divestiture is the essence of this agreement to assure that competition is not substantially lessened;

And Whereas, defendants have represented to plaintiff that the divestiture required below and the relief related thereto can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below:

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties thereto, it is hereby

Ordered, Adjudged and Decreed:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and each of the defendants hereto. The complaint states a claim upon which relief may be granted against each defendant under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II

Definitions

As used in this final judgment:

A. *Mid-America* means Mid-America Dairymen, Inc., a Kansas corporation with headquarters in Springfield, Missouri, its members, directors, officers, employees, affiliates, joint venture or limited liability company partners, successors or assigns, and any agent or representative thereof.

B. *Southern Foods* means Southern Foods Group LP, a partnership organized under the laws of Delaware with headquarters in Dallas, Texas, its members, directors, officers, employees, affiliates, joint venture or limited liability company partners, successors or assigns, or any agent or representative thereof.

C. *Milk Products* means Milk Products LLC, the limited liability company formed by Allen A. Meyer to receive certain dairy processing assets located in New Mexico, Texas and Louisiana formerly owned by Borden/Meadow Gold Dairies Holdings, Inc., its members, directors, officers, employees, affiliates, joint venture or limited liability company partners, successors or assigns, or any agent or representative thereof.

D. *Divestiture Asserts* or *the Assets* means the Borden/Meadow Gold assets located in New Mexico, Texas and Louisiana that Mid-America will acquire through purchase of the voting stock of Borden/Meadow Gold Dairies Holdings, Inc.

E. *The Marks* means certain trademarks described in a Sublicense Agreement between Southern Foods and Milk Products, which include Borden, Elsie and other trademarks granted to Mid-America and/or Southern Foods by license from Borden, Inc. and BDH Two, Inc.

F. *Divest* or *Divestiture* means the complete relinquishing of all rights and equity and other interests in the Divestiture Assets, provided that if Mid-America divests the Assets to Milk Products, it may extend to Milk

Products the Loan defined herein. Divestiture also means to grant an exclusive, royalty-free sublicense to use the Marks in Texas, Louisiana and New Mexico and a non-exclusive, royalty-free sublicense to use the Marks in Alabama, Arkansas, Florida, Mississippi, Tennessee, and Mexico.

G. *Milk Products Loan or the Loan* means the approximately $40 million advanced by Mid-America or Mid-Am Capital LLC for the purchase by Milk Products of the assets located in New Mexico, Texas and Louisiana held by Borden/Meadow Gold Dairies Holdings, Inc., and for which Milk Products has executed Note Purchase Agreements and other related debt instruments setting forth the terms of the loan arrangements.

III

Applicability

A. The provisions of this final judgment shall apply to the defendants, Mid-America Dairymen, Southern Foods Group, and Milk Products, their respective successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this final judgment by personal service or otherwise.

B. Each defendant shall provide written notice to the plaintiff no later than 10 days subsequent to the effective date of any action whereby the defendant (1) changes its name or corporate or organizational structure; (2) liquidates or otherwise ceases operation; or (3) declares bankruptcy. Such notice shall include a full explanation of the action that invokes this provision and shall include full documentation required to be filed with any judicial, administrative or other official entity in connection with that action.

IV

Divestiture

A. Defendant Mid-America is hereby ordered and directed in accordance with the terms of this Final Judgment, within 65 days of the filing of this Final Judgment, or five days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets and the Marks to a purchaser acceptable to the United States. Plaintiff may, in its sole discretion, extend the time period for an additional period of time, not to exceed 90 calendar days in total.

B. Unless the United States otherwise consents in writing, the divestiture of the Assets and the Marks pursuant to Paragraph IV (A), or by a trustee appointed pursuant to Paragraph V of this Final Judgment, shall include all of the Assets and the Marks to be divested to a purchaser in such a way as to satisfy the United States in its sole discretion that the Assets and the Marks can and will be used by the purchaser as part of a viable, ongoing business engaged in the manufacture, sale and distribution of dairy products in New Mexico, Texas and Louisiana. The divestiture, whether pursuant to Paragraph IV or V of this Final Judgment shall be made to a purchaser for whom it is demonstrated to the sole satisfaction of the United States that (1) the purchaser has the capability and intent of competing effectively in the manufacture, sale and distribution of dairy products in New Mexico, Texas and Louisiana; (2) the purchaser has or soon will have the managerial, operational, and financial capability to compete effectively in the manufacture, sale and distribution of dairy products in New Mexico, Texas and Louisiana; and (3) none of the terms of any agreement between the purchaser and Mid-America give Mid-America the ability unreasonably to raise the purchaser's cost, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the manufacture, sale and distribution of dairy products in New Mexico, Texas and Louisiana.

C. The Divestiture of the Assets and the Marks to Milk Products, if accomplished in accordance with this Final Judgment within twenty-four hours following the acquisition by Mid-America of the voting stock of Borden/Meadow Gold, is acceptable to the United States and no further approval of plaintiff pursuant to this Paragraph IV or Paragraph IX is required.

V

Apppointment of Trustee

A. In the event that Mid-America has not divested the Divestiture Assets and the Marks within the time specified in Paragraph IV (A) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Divestiture Assets and the Marks.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to accomplish the divestiture of the Assets and the Marks. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Paragraphs V and IX of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Paragraph V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Mid-America any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Mid-America shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Paragraph IX of this Final Judgment.

C. The trustee shall serve at the cost and expense of Mid-America, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Mid-America and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and the Marks and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Mid-America shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of defendants, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Mid-America shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, that the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs.

VI

Divestiture of the Loan

If Mid-America sells the Divestiture Assets to Milk Products,

A. Mid-America shall reduce its holdings in the Milk Products Loan as follows:

(1) to $30 million or less by December 31, 1997;

(2) to $13 million or less by September 1, 1998; and

(3) to zero by September 1, 1999.

B. Mid-America may sell off any portion of the Milk Products Loan in order to meet the requirements of Paragraph VI(A), provided that no third party purchaser of all or part of the Loan shall (1) be affiliated in any way with Mid-America or (2) be a person engaged in the production, sale or delivery of milk in the sales area of Milk Products.

C. In connection with sale of the Milk Products Loan pursuant to Paragraph VI(A), Mid-America shall not provide a guarantee to any third party purchaser, provided, however, that Mid-America may, in its discretion, after it has reduced its holdings in the Loan to not more than $13 million, guarantee some or all of the remaining $13 million. Any guarantee by Mid-America must be without recourse against Milk Products for any sums paid by Mid-America by virtue of the guarantee.

D. At no time while Mid-America holds all or part of the Milk Products Loan shall Mid-America (1) require that Milk Products seek approval from, or give notice to, Mid-America before incurring any indebtedness, or (2) place any restriction on Milk Products' ability to conduct its operations as it sees fit.

VII

Acquisitions and Access to Information

During any period in which Mid-America retains an ownership interest in Southern Foods,

A. No member, officer, employee or agent of Southern Foods or Mid-America (other than members, officers, employees, or agents of Land-O-Sun Dairy LLC, who are not otherwise affiliated with Mid-America or Southern Foods) shall be employed by or serve as an officer, director, member, or agent of Milk Products.

B. No member, officer, employee or agent of Milk Products shall be employed by or serve as an officer, director, member or agent of Mid-America or Southern Foods (other than members, officers, employees or agents of Land-O-Sun Dairy LLC, who are otherwise not affiliated with Mid-America or Southern Foods).

C. Neither Mid-America nor Southern Foods shall merge or consolidate with, acquire membership in or securities or assets of, or provide loans or other financing to (except for trade credit extended in the ordinary course of business) Milk Products, without having first obtained the written approval of the United States. Any request for such approval shall be directed to the Antitrust Division, U.S. Department of Justice, Transportation, Energy and Agriculture Section, with a copy to the Director of Operations.

D. Mid-America, Southern Foods, and Milk Products shall not disclose to each other, directly or indirectly, any competitively sensitive information including, but not limited to, information concerning present or future prices or other terms or conditions of sale including discounts, slotting allowances, bids or price lists, costs, capacity, distribution, marketing plans or territories, supply, sales forecasts, customer relationships (including the identity of actual or potential customers or quantities sold to any particular customer).

E. Notwithstanding Paragraph VII(D), Mid-America may, during any period in which it is a creditor of Milk Products, obtain and retain copies of the following information, solely to protect its interests as a creditor:

(1) Copies of Milk Products' federal income tax returns for each year; and

(2) quarterly financial statements, including a balance sheet, a statement of profits and losses, and a statement of cash flow, aggregated for the entire company. Nothing in this provision shall limit the information that a purchaser of any portion of the Milk Products Loan may request and obtain, subject to reasonable commercial credit practices.

F. Nothing in this Final Judgment shall prohibit the orderly transfer of business records, reports or accounting materials from Borden/Meadow Gold to Southern Foods or to Milk Products, which shall be accomplished within 120 days of the closing of the transaction.

VIII

Sublicense Agreement

A. Southern Foods, as sublicensor of the Marks, shall promptly notify Borden, Inc. and BDH Two, Inc., the owners of the Marks, of any unauthorized use of the Marks when such use comes to the attention of Southern Foods from any source, including Milk Products, and Southern Foods shall take all actions as may be required by Borden, Inc. and BDH Two, Inc. regarding the unauthorized use of the Marks.

B. Neither Mid-American nor Southern Foods shall assert or claim that on any sublicensee of the Marks' sale of any equity interest in the sublicensee or any change in control or ownership in the sublicensee will affect or diminish the sublicensee's rights in or use of the Marks.

C. Mid-American and Southern Foods shall ensure that the rights that any sublicensee obtains in the Marks are equal to all the rights and privileges that Southern Foods obtains for itself in its license of the Marks from Borden, Inc. and BDH Two, Inc.

IX

Notification

Within two (2) business days following execution of a definition agreement, contingent upon compliance with the terms of this Final Judgment, any proposed divestiture pursuant to Paragraph IV, V or VI of this Final Judgment, Mid-America or the trustee, whoever is responsible for the divestiture, shall notify plaintiff of the proposed divestiture and provide documentation that the conditions set forth in Paragraphs IV through VII have been met.

If the trustee is responsible, it shall similarly notify Mid-America. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from Mid-America, the proposed purchaser, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture and the proposed purchaser. Mid-America and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from Mid-America, the proposed purchaser, any third party, and the trustee, whichever is later, the United States shall provide written notice to Mid-America and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Mid-America and the trustee that it does not object, then the divestiture may be consummated, subject only to Mid-America's limited right to object to the sale under Paragraph V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV shall not be consummated. Upon objection by the United States, or by Mid-America in accordance with Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

X

Affidavits

A. Within twenty (20) calendar days of the closing of any transaction in which Mid-America directly or indirectly acquires all or any part of the assets or capital stock of Borden/Meadow Gold, and every thirty (30) calendar days thereafter until the divestiture of the Divestiture Assets and the Loan has been completed pursuant to Paragraphs IV, V and VI of this Final Judgment, Mid-America shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Paragraph IV, V and VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets or in the Loan, and shall describe in detail each contact with any such person during that period.

B. Mid-America shall preserve all records of all efforts made to divest the Loan and the Assets. This provision shall not apply to divestiture of the Assets if they are sold pursuant to Paragraph IV(C) herein.

XI

Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the United States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in Paragraph XI of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII

Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIV

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: ____________________

____

United States District Judge

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon the attorneys for Mid-America Dairymen, Inc., Southern Foods Group LP, and Milk Products LLC by placing a copy in the U.S. Mail, directed to each of the above named parties at the addresses given below, this 3rd day of September 1997.

Mid-America Dairymen, Inc., c/o W. Todd Miller, Baker & Miller PLLC, Suite 615, 700 Eleventh Street, NW., Washington, DC 20001.

Southern Foods Group LP, c/o Jerry L. Beane, Strasburger & Price LLP, Suite 4300, 901 Main Street, Dallas, Texas 75202.

Milk Products LLC, c/o Jerry L. Beane, Strasburger & Price LLP, Suite 4300, 901 Main Street, Dallas, Texas 75202.

Joan S. Huggler,

DC Bar #927244, Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh St. NW., Suite 500, Washington, DC 20530, (202) 307–6456, (202) 661–2441 (Facsimile).

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16 (b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on September 3, 1997, alleging that the proposed acquisition by Mid-America Dairymen, Inc. (''Mid-America'') of the voting stock of Borden/Meadow Gold Dairies Holdings, Inc. (''Borden/Meadow Gold'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, by combining the two main suppliers of milk to schools in Eastern Texas and Louisiana.

The Complaint alleges that the acquisition of Borden/Meadow Gold's fluid milk processing plants in Eastern Texas and Louisiana by Mid-America, owner of a substantial interest in Southern Foods Group LP (''Southern Foods''), would substantially lessen competition in the production, sale and distribution of milk to schools in the area where Borden/Meadow Gold and Southern Foods each has operations and competes for school milk business.

The Complaint also alleges that the parties' proposed remedy—divestiture of the overlapping facilities formerly held by Borden/Meadow Gold to a newly-formed company called Milk Products LLC that would be financed in large part by a loan to Milk Products from Mid-America affiliate Mid-Am Capital LLC—would not adequately replace the competition now provided by Borden/Meadow Gold in Eastern Texas and Louisiana.

At the same time the suit was filed, a proposed settlement was filed that would permit Mid-America to complete the acquisition of Borden/Meadow Gold, yet preserve competition in the areas where the transaction would raise significant competitive concerns.

The proposed Final Judgment orders Mid-America to divest the Borden/Meadow Gold assets in Texas, Louisiana and New Mexico to a purchaser acceptable to the United States. The Final Judgment would allow divestiture to Milk Products if the loan to Milk Products by Mid-Am Capital is appropriately conditioned and sold off in its entirety within two years. If Mid-America divests the overlapping assets to Milk Products within 24 hours of its acquisition of the voting stock of Borden/Meadow Gold in accordance with the Final Judgment, no further approvals would be needed.

If Mid-America does not divest to Milk Products, the assets must be divested to another purchaser within 65 days of the closing of the acquisition of the Borden/Meadow Gold voting stock (''the stock transaction''), which period may be extended by the United States to no more than 90 days. If the divestiture still has not occurred after 90 days, the United States may ask the Court to appoint a trustee who shall assume the responsibility for selling those assets.

The Final Judgment sets out the conditions for reduction of the loan amount advanced to Milk Products by Mid-Am Capital. The loan amount may be reduced in three segments, to reach zero by September 1, 1999. The Final Judgment also imposes other restrictions on Mid-America's ability to affect the competitive performance of Milk Products because of its creditor relationship through Mid-Am Capital.

Finally, the Final Judgment contains provisions that limit communications and other interaction among Mid-America, Southern Foods, and Milk Products, with the purpose of minimizing or eliminating the opportunity or ability of any of them to affect competitive outcomes in school milk bid markets in Eastern Texas and Louisiana.

The United States, Southern Foods and Milk Products have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the Final Judgment and to prevent violations of it.

II

Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Mid-America is the nation's largest cooperative of diary farmers, with some 18,000 members in 30 states. In addition to marketing the milk of its members, Mid-America has extensive ownership and other interests in dairy manufacturing and processing operations and in the sale of products and services related to dairying, such as farm equipment and cleaning supplies. Mid-America had revenues of more than $4 billion in 1996.

Southern Foods in one of Mid-America's joint venture affiliates. It is organized as a partnership whose owners are Mid-America (50%) and, until recently, two individual owners of the remaining 50% share of the partnership. (One of these individuals is Allen A. Meyer, who will sell his interest in Southern Foods to Pete Schenkel, the other 25% owner, as a precondition to the divestiture of the Borden/Meadow Gold assets in Eastern Texas and Louisiana into Milk Products, of which Meyer will be the sole owner.) From its plants in Eastern Texas and Louisiana, Southern Foods sells a variety of dairy products including fluid milk for schools. In 1996, Southern Foods had revenues of more than $550 million. Southern Foods operates eight fluid milk processing plants—five in Eastern Texas and three in Louisiana. Southern Foods sells under a number of brand names including Oak Farms, Golden Royal, Midwest Farms, Sunnydell, Texas Bluebonnet, Schepps, Dairyland, Gooddy, Brown's Velvet, Medallion, Foremost, Barbe, and Guth.

Milk Products is a newly-formed limited liability company that will purchase the Borden/Meadow Gold facilities whose marketing areas in Eastern Texas and Louisiana overlap with the marketing area of Southern Foods in these states.

On May 22, 1997 Mid-America and Borden/Meadow Gold entered into an agreement whereby Mid-America would acquire all of the voting stock of Borden/Meadow Gold for $435 million. Mid-America would thereby acquire 25 processing plants and related facilities in all states. On May 28, 1997, Mid-America agreed that it would sell the to-be-acquired assets in Texas, Louisiana and New Mexico to Milk Products for $65 million and that the purchase would be financed in part by a loan from Mid-Am Capital of at least $35 million. The Loan amount was later increased to $40 million.

B. Fluid Milk Sold to Schools

Fluid milk is pasteurized milk sold for human consumption in liquid form. In addition to supermarkets and grocery stores, other major buyers of fluid milk are institutional customers such as schools, hospitals, military installations and prisons. Whereas supermarkets and other large grocery stores buy most of their milk packaged in gallon, half gallon an quart size containers, other customers, particularly schools, purchase most, if not all, of their milk in half pint containers, which is a convenient size for storage and for serving to children in school cafeterias. Virtually all fluid milk processing plants package milk in gallons and half gallons, but not all of them produce half pints. Therefore, school districts that are looking for suppliers have a smaller universe of potential of potential sellers than do most retail outlets, warehouses and other customers.

Most schools participate in the federally-funded National School Lunch Program and School and Breakfast Program. In order to receive reimbursement for meals served at lower than cost to eligible children in these programs, schools must offer eight ounces of milk as part of each meal they serve. It is thus important for many school districts, which often operate on limited budgets, to have a steady and reliable source of milk. There are no substitutes for milk that schools can use still received such reimbursement. Therefore, even a substantial rise in the price of milk to schools would not cause a school district to turn to another product.

Schools also have special delivery and service needs that other buyers of fluid milk often do not have. Because their storage space and equipment such as coolers are often limited, many schools require frequent deliveries, sometimes as many as five days a week. Many schools specify that the milk be delivered at particular hours during the day. These factors, plus the seasonal nature of their purchases, generally dictate the methods to be used by their milk suppliers in servicing them. Most often, school milk is delivered on small (14 feet to 18 feet) route trucks that also carry milk and other dairy products for non-school customers such as small grocery or convenience stores, restaurants, or hospitals.

School districts that require such service can obtain supplies only from a milk processor that has both the ability and the desire to package milk in half pint containers and also has an established small route truck distribution system in or near the school district. As a general rule, only such a processor can economically serve those districts.

School districts purchase their milk on the basis of competitive bids that are requested annually. Contracts are usually awarded for a one-year term. Each bid cycle may produce a new set of bidders for that business in that time period.

C. Competition Between Southern Foods and Borden/Meadow Gold

Southern Foods and Borden/Meadow Gold are the primary, and often the only, actual or potential suppliers of fluid milk to schools in Eastern Texas and Louisiana. These firms also compete with other processors for sales to supermarkets and grocery stores. These other processors do not compete for school milk, however, because they lack half-pint packaging equipment, small delivery truck routes, or both. Both Southern Foods and Borden/Meadow Gold also compete with others for the private label milk business of large wholesalers and retailers.

In the school milk markets, however, Southern Foods and Borden/Meadow Gold are often the only bidders for a particular school district. This is true both in large metropolitan areas such as Dallas/Fort Worth, Waco, and San Antonio and in many other less populated areas of Eastern Texas. In the Houston area, and around Bryan and College Station, Southern Foods and Borden/Meadow Gold sometimes compete with one other milk processor. In most of Louisiana, the only third bidder to school districts is a small dairy processing firm located in Baton Rouge whose ability to serve schools is limited to an area about 50 miles around Baton Rouge.

The Complaint alleges that, were Mid-America to retain the Borden/Meadow Gold assets it will own as a result of the stock transaction, there would be a significant loss of competition for school milk business in Eastern Texas and Louisiana. This is because Mid-America would replace an independent firm (Borden/Meadow Gold) that is the most significant school milk competitor of Southern Foods, a Mid-America affiliate.

The Complaint also alleges that the parties' proposed remedy—divestiture of the Texas, Louisiana and New Mexico assets to Milk Products with a loan to Milk Products by a Mid-America affiliate, Mid-Am Capital—is inadequate to cure the anticompetitive effects of the stock transaction. Mid-America has a substantial ownership interest in Southern Foods. The size and terms of the loan as originally proposed, together with Mid-America's financial interest in Southern Foods, could give Mid-America's financial interest in Southern Foods, could give Mid-America both the incentive and the ability to inhibit competition between Southern Foods and Milk Products.

The Complaint alleges that school milk markets in many areas of the country have been subject to collusive behavior by dairy firms and that where collusion in these markets has been detected it has been shown to persist for many years. Thus, according to the Complaint, new entry into the provision of milk to schools in Eastern Texas and Louisiana by other processors is unlikely to counteract the anticompetitive effects of the stock transaction, even with the remedy as proposed by the parties.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of fluid milk to schools in Eastern Texas and Louisiana. The Judgment reflects the intention of Mid-America to sell the Borden/Meadow Gold assets in Texas, Louisiana and New Mexico to Milk Products promptly following the closing of the stock transaction. Should that divestiture not occur, the proposed Final Judgment requires divestiture of these assets within 65 days of the stock transaction of the stock transaction or five days after notice of the entry of this Final Judgment by the Court, whichever is later, to a purchaser acceptable to the United States. That period could be extended by the United States to 90 days. Should Mid-America be unable to divest the assets to an acceptable purchaser within the appointed time, the Final Judgment requires that the United States request the Court to appoint a trustee, who will assume the responsibility of selling the assets to a purchaser acceptable to the United States. Under the terms of the proposed trusteeship, the trustee will have the incentive to quickly conclude a sale of the assets. After the appointment, the trustee will file monthly reports with the parties and the Court regarding the efforts made to sell the assets. If divestiture has not occurred within six months, the trustee and the parties will make recommendations to the Court, which shall enter such orders as are appropriate.

The Final Judgment also places restrictions on the size and terms of the loan that Mid-America or its affiliate, Mid-Am Capital, will make to Milk Products in connection with divestiture of the assets to Milk Products. Financing for the purchase of the assets by Milk Products will come from two sources. One is a secured revolving loan provided by Bank of America. The other is a $40 million loan provided by Mid-Am Capital that is unsecured and not convertible to equity. The Final Judgment prohibits Mid-America and Mid-Am Capital from requiring that Milk Products obtain their approval before incurring any indebtedness and from interfering in any way in the operation of Milk Products' business because of the creditor relationship.

The proposed Final Judgment also places limits on the length of time that Mid-American or Mid-Am Capital may hold the loan and restricts the amount of the loan that either may hold at any particular time. The Final Judgment requires Mid-America or Mid-Am Capital to terminate its interest in the loan by selling it to a third party purchaser or purchasers if necessary by no later than September 1, 1999, and to reduce its interest in the loan before that at least by amounts sufficient to meet two interim goals. The Final Judgment recognizes that sale of the last portion of the loan (not to exceed $13 million) may be facilitated if Mid-American were to guarantee that part of the loan. Nevertheless, the Judgment prohibits any guarantee that would allow Mid-American to recover from Milk Products any monies paid in its role as guarantor.

The Final Judgment contains additional provisions that are designed to protect against anticompetitive effects that might occur because of Mid-America's relationships with Southern Foods and Milk Products. The Final Judgment prohibits Milk Products. The Final Judgment prohibits Milk Products, Southern Foods and Mid-America from exchanging competitively sensitive information among themselves and thereby dampening competition between Milk Products and Southern Foods in Eastern Texas and Louisiana.

The Final Judgment also enjoins Southern Foods and Mid-America, in any period while Mid-America has an interest in Southern Foods, from sharing employees, members, officers, or agents with Milk Porducts. Such intermingling of personnel could easily inhibit vigorous competition between Milk Products and Southern Foods. Because the owner of Milk Products will retain his ownership interest in Land-O-Sun Dairy LLC, a Mid-American joint venture based in Tennessee which does not operate in Texas or Louisiana, the prohibition against sharing officers, employees or agents does not apply to Land-O-Sun's employees, members, officers or agents.

Finally, the Final Judgment contains provisions that are designed to ensure that Milk Products or any purchaser of the divested assets will have full rights in and use of certain trademarks of Borden, Inc. and BDH Two, Inc. (''Borden''). Borden will grant to Mid-American and/or Southern Foods an exclusive, royalty-free license to use the Borden, Elsie and other trademarks in Texas, Louisiana, and New Mexico and a non-exclusive license to use them in Alabama, Arkansas, Florida, Mississippi, Tennessee, and Mexico. The Final Judgment provides that Southern Foods, in term, will sublicense the Borden and Elsie marks to Milk Products and that Mid-American and Southern Foods will ensure that Milk Product's (or another purchaser's) rights in the marks will be equal to all the rights and privileges that Southern Foods obtains for itself in its license of the marks from Borden. Mid-American and Southern also are enjoined from asserting or claiming that a sale of an equity interest in Milk Products will affect or diminish Milk Products' rights in the marks.

IV

Remedies Available To Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16 (a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides that there be a period of at least sixty (60) days prior to the effective date of a proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the Final Judgement at any time prior to entry. The United States will respond to the comments and file both the comments and the responses with the court.

Any person believing that the proposed Final Judgment should be modified may submit written comments to: Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, United States Department of Justice, Suite 500, 325 Seventh Street, N.W., Washington, D. C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternative to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint in this case. Such litigation would involve all of the issues in this case, including the proposed remedy of the parties. In the view of the Department of Justice, a full trial on the merits is not warranted in this case because divestiture of the assets and loan, under the terms of the Final Judgment, as well as the additional relief relating to possible spillover effects stemming from the relationships of Mid-America, Southern Foods and Milk Products, would preserve the competition adversely affected by the acquisition of the Borden/Meadow Gold voting stock by Mid-America. The proposed Final Judgment is designed to achieve fully adequate relief, while avoiding the expense and uncertainty of a full trial on the merits.

VII

Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the United States Court of Appeals for the D.C. Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy

secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.[1] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree mut be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).'' [3]

VII

Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: September 5, 1997.

Respectfully submitted.

Joan S. Huggler,

DC Bar #927244.

Michael P. Harmonis,

PA Bar #17994.

Robert D. Young,

DC Bar #248260.

Attorneys, Antitrust Division, U.S. Department of Justice, Transportation, Energy and Agriculture Section, Suite 500, 325 Seventh Street, N.W., Washington, D.C. 20530, (202) 307–6456.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendants in this matter in the manner set forth below:

By first class mail, postage prepaid:

W. Todd Miller, Esquire, Baker & Miller PLLC, Suite 615, 700 Eleventh Street, N.W., Washington, D.C. 20530

(Counsel for Mid-America Dairymen, Inc.)

Jerry L. Beane, Esquire, Strasburger & Price LLP, Suite 4300, 901 Main Street, Dallas, Texas 75202

(Counsel for Southern Foods Group LP and Milk Products LLC)

Dated: September 5, 1997.

Joan S. Huggler,

DC Bar #9272244.

Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307–6456, (202) 616–2441.

[FR Doc. 97–25077 Filed 9–19–97; 8:45 am]

BILLING CODE 4410–01–M

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1 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

2 *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716; *see also Microsoft,* 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '') (citations omitted).

3 *United States* v. *American Tel. and Tel. Co.;* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom, Maryalnd* v. *United States,* 460 U.S. 1001 (1983), *quotating United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Key. 1985).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: NASA will conduct an open forum meeting to solicit questions, views and opinions of interested persons or firms concerning NASA's procurement policies and practices. The purpose of the meeting is to have an open discussion between NASA's Associate Administrator for Procurement, industry, and the public.

DATES: November 12, 1997, from 2:00 p.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Florida Solar Energy Center Auditorium located at 1679 Clearlake Road, Cocoa, Florida.

FOR FURTHER INFORMATION CONTACT: Joy Colston, NASA Kennedy Space Center, Code OP, Kenndey Space Center, FL 32899, (407) 867-7212.

SUPPLEMENTARY INFORMATION:

Format

There will be a presentation by the Associate Administrator for Procurement, followed by a question and answer period. Procurement issues will be discussed including NASA policies used in the award and administration of contracts.

Admittance

Doors will open at 1:30 p.m. Admittance will be on a first-come, first-served basis. Auditorium capacity is limited to approximately 120 persons; therefore, a maximum of two representatives per firm is requested. No reservations will be accepted. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited.

Initiatives

In addition to the general discussion mentioned above, NASA invites comments or questions relative to its ongoing Procurement Initiatives, some of which include the following:

Consolidated Contracting Initiative

The CCI initiative emphasizes developing, using, and sharing contract resources to meet Agency objectives.

Single Process Intiative/Block Changes

The purpose of the Single Process Initiative/Block changes is to eliminate duplicative, highly-tailored or customer-unique requirements from contacts and adopt instead, a single process proposed by the contractor.

Contractor Performance Assessment Program

The Contractor Performance Assessment Program assesses the overall performance of NASA's top contractors across all of their major NASA contracts.

Performance Based Contracting

This initiative is focused on structuring an acquisition around the purpose of the work to be performed instead of how the work is to be performed or broad and imprecise statements of work.

Electronic Contracting

NASA's EC initiative is moving procurement transactions from traditional paper-based systems to electronic processing whenever possible. These transactions include solicitation and award documents as well as payment for our goods and services.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

[FR Doc. 97–25100 Filed 9–19–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

DATES: September 22, 1997.

FOR FURTHER INFORMATION CONTACT: Maxine C. Jefferson, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 627, Washington, DC 20506, (202) 682–5405.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of Title 5, USC, requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts:

Ana M. Steele, Deputy Chairman for Management and Budget
Laurence M. Baden, Director of Administration
Scott Shanklin Peterson, Deputy Chairman for Grants and Partnership
Alfred B. Spellman, Jr., Director of Office of Guidelines and Panel Operations

Maxine C. Jefferson,

Director of Human Resources, National Endowment for the Arts.

[FR Doc. 97–25062 Filed 9–19–97; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[IA 97–070]

In the Matter of Magdy Elamir, Newark, New Jersey; Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Magdy Elamir, M.D. (Dr. Elamir), is the Owner/President of Newark Medical Associates, P.A. (licensee). The licensee holds Byproduct Nuclear Material License No. 29–30282–01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of any radiopharmaceutical identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was originally issued on September 25, 1996, and is due to expire on September 30, 2001.

II

During a new license inspection conducted on January 29, 1997, at the licensee's facility, several apparent violations of NRC requirements were identified. Subsequent to the inspection, the NRC initiated an investigation which led the NRC to issue to Dr. Elamir, on July 31, 1997, an Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) Pending Further Order (62 FR 43360). That Order was issued pending completion of the NRC staff review of the results of the investigation, which was conducted by the NRC's Office of Investigations (OI). The NRC staff's review of the results of the OI investigation is now complete.

III

The OI investigation focused, in part, on Dr. Elamir's actions in causing the licensee to be in violation of NRC requirements. The NRC learned during the investigation that Dr. Elamir transmitted an inaccurate license application (NRC Form 313, dated February 21, 1996) to the NRC. The license application named Newark Medical Associates as the prospective licensee. The license application was inaccurate in that it named Gerard W. Moskowitz, M.D. (Dr. Moskowitz), as the only authorized user and Radiation Safety Officer (RSO) without Dr. Moskowitz's consent or knowledge, and without Dr. Moskowitz's ever having been affiliated or associated with the licensee. Dr. Moskowitz did not ever perform the role of authorized user or RSO at the licensee's facility, and did not become aware that he was listed on the application and the license until notified by the NRC on February 6, 1997, more than four months after the license was originally issued. These inaccurate statements in the license application submitted by Dr. Elamir, formed, in part, the basis for the issuance of the license to Newark Medical Associates on September 25, 1996.

On October 17, 1996, Dr Elamir notified the NRC by letter that Newark Medical Associates was initiating activities authorized by the license; and during the period from November 1996 through February 6, 1997, Dr. Elamir, in his capacity as president and owner of Newark Medical Associates, caused and permitted the licensee to conduct NRC-licensed activities even though he knew that the licensee did not employ the authorized user or the RSO named in the license application and, subsequently, on the NRC license, and that the named individual did not serve in these capacities. Based on the results of the OI investigation, the NRC has determined that Dr. Elamir's actions constitute violations of the Commission's requirements as follows:

A. 10 CFR 30.10(a)(2) requires, in part, that any licensee or employee of a licensee may not deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

During a February 6, 1997 telephone conversation between Dr. Elamir and an NRC inspector, Dr. Elamir stated to the NRC inspector that the Newark Medical Associates license was current with respect to the authorized user and RSO even though Dr. Elamir knew that the individual named on the license as the authorized user and RSO was not performing those duties and was not ever affiliated with the licensee in any capacity. This inaccurate statement was material because it had the ability to influence an NRC inspection.

B. 10 CFR 30.10 (a)(1), (c)(1), and (c)(2) require, in part, that any licensee or employee of a licensee not engage in deliberate misconduct that causes or, but for detection, would have caused a licensee to be in violation of: (1) Any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission; or (2) any requirement, procedure, instruction, contract, purchase order or policy of a licensee.

1. 10 CFR 35.21 requires that a licensee appoint a Radiation Safety Officer responsible for implementing the radiation safety program; and requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program.

10 CFR 35.13 requires that a licensee apply for and receive a license amendment before it changes Radiation Safety Officers.

Byproduct Material License No. 29–30282–01, Condition 12, dated September 25, 1996 states that the Radiation Safety Officer for this License is Gerard W. Moskowitz, M.D.

On October 17, 1996, Dr Elamir notified the NRC by letter that Newark Medical Associates was initiating activities authorized by the license; and, during the period from November 1996 through February 6, 1997, Dr. Elamir caused Newark Medical Associates to be in violation of the requirements in Section III.B.1 above by deliberately causing and permitting the licensee to conduct licensed activities even though Dr. Elamir knew that the individual designated as the RSO on the Newark Medical Associates license application and subsequent license did not ever serve as the Radiation Safety Officer under that license and was not ever affiliated with the licensee in any capacity.

2. 10 CFR 35.11 (a) and (b) permit an individual to use licensed material for medical use only in accordance with a specific license issued by the Commission or under the supervision of an authorized user as provided in 10 CFR 35.25.

Byproduct Material License No. 29–30282–01, dated September 25, 1996, states in Condition 13 that licensed material is only authorized for use by, or under the supervision of, Gerard W. Moskowitz, M.D.

On October 17, 1996, Dr Elamir notified the NRC by letter that Newark Medical Associates was initiating activities authorized by the license; and during the period from November 1996 through February 6, 1997, Dr. Elamir caused Newark Medical Associates to be in violation of the requirements in Section III.B.2 above by deliberately causing and permitting licensed activities to be conducted by a technologist who did not hold a specific license issued by the NRC and who was not under the supervision of the authorized user specified on the license. Dr. Elamir knew that the individual designated as the only authorized user on the Newark Medical Associates license application and subsequent license did not ever serve as the authorized user under that license and was not ever affiliated with the licensee in any capacity.

IV

Based on the above, the NRC staff has concluded that Dr. Elamir deliberately caused the licensee to be in violation of NRC requirements by causing and permitting the licensee to conduct licensed activities in the absence of the authorized user and RSO named on the license application and on the NRC license. The NRC must be able to rely on the licensee and its employees to comply with NRC requirements. Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public, including patients receiving radiation from byproduct material for medical purposes, will be protected if Dr. Elamir were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Elamir be prohibited from any involvement in NRC-licensed activities for a period of five years. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Dr. Elamir's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, Part 35, and 10 CFR 150.20, *It Is Hereby Ordered That, Effective Immediately.*

1. The Order of July 31, 1997, is superseded, in its entirety.

2. Dr. Elamir is prohibited from engaging in NRC-licensed activities for a period of five years from July 31, 1997. This prohibition applies to Dr. Elamir as an officer, employee, contractor, consultant, or other agent of a licensee and includes, but is not limited to: (1) Any use of NRC-licensed materials; (2) supervising licensed activities, including (but not limited to) hiring of individuals engaged in licensed activities or directing or managing individuals engaged in licensed activities; (3) any involvement in radiation safety activities including (but not limited to) functions of the Radiation Safety Officer; and (4) development of license applications, procedures, and policies to meet license requirements, providing training to meet license requirements, and providing professional services to meet license requirements. NRC-licensed activities are those activities that are conducted pursuant to a specific or general NRC license, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

3. If, as of July 31, 1997, Dr. Elamir was involved in NRC-licensed activities other than at Newark Medical Associates, P.A., he must: (1) Immediately cease such activities; (2) inform the NRC of the name, address and telephone number of the NRC-licensed entity or entities where the activities are being conducted; and (3) provide a copy of this order to all such NRC-licensed entities.

4. For any entities, other than Newark Medical Associates, P.A., where Dr. Elamir was involved in NRC-licensed activities for the period beginning three years prior to the date of this Order, Dr. Elamir must, within 30 days of the date of this Order, inform the NRC of the name, address and telephone number of the NRC-licensed entities where those activities were conducted.

5. For the five years immediately following the five year prohibition in paragraph V.2 above, the first time that Dr. Elamir is employed or involved in NRC-licensed activities following the five year prohibition, he shall notify the Director, Office of Enforcement, at the

address in Section VI below, prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. This notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed; and shall include a statement as to why the NRC should have confidence that Dr. Elamir will not, in the future, commit deliberate violations of Commission requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

VI

In accordance with 10 CFR 2.202, Dr. Elamir must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. Elamir or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemaking and Adjudications, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Dr. Elamir if the answer or hearing request is by a person other than Dr. Elamir. If a person other than Dr. Elamir requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. Elamir or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Dr. Elamir may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated at Rockville, Maryland this 15th day of September 1997.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 97–25080 Filed 9–19–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 40–7102]

Finding of No Significant Impact for the Renewal of Source Material, License SMB–743, Shieldalloy Metallurgical Corporation, Newfield, New Jersey

The U.S. Nuclear Regulatory Commission is considering the renewal of the Source Material License SMB–743 for the continued operation of Shieldalloy Metallurgical Corporation (SMC), located in Newfield, New Jersey

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of SMC's Source Material License SMB–743 for 5 years. With this renewal, the SMC facility will continue to produce specialty alloys, slag fluidizers, and other products. The proposed action would permit SMC to possess up to 1,200,000 kilograms (kg) of thorium–232 and 180,000 kg of uranium–238, as requested in SMC's September 15, 1995, renewal application. As part of the proposed action, SMC would also continue to add radioactive materials to the temporary stockpiles of slag and baghouse dust currently stored at the site until a final disposition is approved by the commission. Although the continued storage of this material is evaluated as part of the environmental assessment (EA), the evaluation of environmental impacts from a final disposition method is outside the scope of this EA and will be addressed in a separate environmental action.

The Need for the Proposed Action

SMC performs a service for the commercial steel industry by producing speciality alloys, slag fluidizers, and other products. SMC is one of two domestic producers of ferrocolumbium (ferroniobium alloy), its main product from the licensed activities; ferrocolumbium is readily available from foreign producers, such as Brazil and, recently, the Confederation of Independent States (formerly the Soviet Union) and Canada. The element niobium can increase the strength of steel by more than 5,000 pounds per square inch (psi) with only a small addition of niobium (approximately 0.01 percent), thus allowing lighter weight alloys. Denial of the license renewal for the SMC facility is an alternative available to NRC, but would either require the construction of a new facility at another site or a possible dependence upon foreign imports of ferrocolumbium.

Environmental Impacts of the Proposed Action

The radiological impacts of the continued operation of the SMC facility were assessed by calculating the radiation doses to the maximally exposed individual located at the facility fence line and the collective radiation dose to the local population living within 80 kilometers (50 miles0 of the plant site. The primary exposure pathway is release and transport of radioactive effluents to the air.

Doses From Routine Airborne Releases

SMC operates their process using two baghouses to filter airborne material: the Flex Kleen (FK) Baghouse and the American Air Filter (AAF) Baghouse. Atmospheric releases were determined from the two D–111 Baghouse stacks. Other potential release points including stored dust and slag piles were also considered, but off-site doses from these release points were found to be negligible.

SMC submitted March 1996 measurement data from stack emissions showing doses less than 1 millirem (mrem) per year at the fence line under nominal conditions. Conservative estimates of the expected effluent release rates were calculated by the NRC staff using assumptions, including the following: (1) the use of conservative values for the efficiencies of baghouse filters based upon the possibility of undetected filter bag breakages and (2) a ground-level release point for both baghouses. The radiation doses resulting from atmospheric releases were estimated using the CAP88–PC (Clean Air Assessment Package 1988) Version 1.0 computer code. The maximally exposed individual was located at the fence line, which was 250 meters (820) feet) south of the SMC facility. The Total Effective Dose Equivalent (TEDE) to the nearest resident is estimated to be less than 9 mrem per year from all pathways. Inhalation intakes accounted for greater than 85 percent of the total radiation dose. Thorium-232 was the dominant dose contributor, accounting for about 30 percent of the total dose This estimated radiation dose is less than the 100 mrem per year limit established by NRC in 10 CFR 20.1301 and the 10 millirem per year dose constraint for air emissions in 10 CFR 20.1101.

The population within 80 km (50 miles) of SMC's facility is about 6,766,961 people, based on 1994 census data. The collective dose to the surrounding population is expected to be less than 7 person-rem per year. Based on an average background radiation dose of about 0.3 rem per year for individuals in the U.S. from natural sources, the same population would receive about 2,00,000 person-rem per year from background radiation. Thus, the collective radiation dose associated with atmospheric releases from the SMC's facility is a small percentage of the collective radiation dose from natural background radiation for these same people.

Accident Evaluation

In the EA, NRC staff evaluated one accident as the bounding accident: the release of dust from a baghouse or silo. This accident assumed that 10,000 kg of dust were released from structural failure of a baghouse. Calculated release fractions were 4 to 5×10^{-3}. Other accidents were determined to be within the bounds of this accident because both quantities and form of the material made larger dispersions unlikely. This bounding accident was calculated as a result in an exposure of less than 6 mrem TEDE to the nearest resident. The expected population dose from this accident would be no greater than 0.9 person-rem.

Agencies and Persons Consulted

Discussions were held with representatives from the State of New Jersey Department of Environmental Protection and the U.S. Environmental Protection Agency at various times throughout the preparation of the EA. NRC consulted SMC representatives in preparing this document.

Conclusion

On the basis of this Environmental Assessment, NRC has concluded that the environmental impacts from the proposed action would not be significant.

Finding of No Significant Impact

The NRC has prepared an EA related to the renewal of Source Material License SMB–743. On the basis of the assessment, the NRC has concluded that environmental impacts that would be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, NRC has determined that a Finding of No Significant Impact is appropriate.

The EA, the license renewal application dated September 15, 1995, and the documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC. Anyone with questions or comments about this proposed action should contact Ms. Heather Astwood, NRC's Project Manager for the facility, at Mail Stop T–8D–14, U.S. NRC, Washington, D.C. 20555 or in (301) 415–5819.

Dated at Rockville, Maryland, this 16th day of September, 1997.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–25078 Filed 9–19–97; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Edwin I. Hatch Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations with respect to Facility Operating Licenses DPR–57 and NPF–5 issued to Southern Nuclear Operating Company, Inc., et al. (Southern Nuclear, or the licensee) for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated July 2, 1997, for exemption from certain requirements of 10 CFR 73.55, ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage.'' The exemption would allow photo identification badges to be taken offsite by individuals not employed by the licensee who have been granted unescorted access into protected and vital areas, in light of the implementation of a hand geometry biometrics system to control site access at Hatch.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), Southern Nuclear shall establish and maintain an onsite physical protection system and security organization. Regulation 10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), specifies that the ''licensee shall control all points of personnel and vehicle access into a protected area.'' Regulation 10 CFR 73.55(d)(5) specifies that, ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' Section 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual, ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area....'' Currently, unescorted access into protected areas at the Hatch plant is controlled through the use of a photograph on a badge/keycard (hereafter referred to as a ''badge''), which is stored at the access point when not in use. The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for Southern Nuclear employees and contractor personnel who have been granted unescorted access are given to the individuals at the entrance location upon entry and are returned upon exit. In accordance with 10 CFR 73.55(d)(5), the badges are not allowed to be taken offsite.

The licensee proposes to implement an alternate unescorted access control system that would eliminate the need to issue and retrieve badges at the entry point and would allow all individuals with unescorted access to keep their badges when departing the site. An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

Because the proposed action involves administrative matters within the protected area as defined in 10 CFR Part 20, the Commission concludes that this proposed action would result in no significant radiological impacts. With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Edwin I. Hatch Nuclear Plant, Unit 1 dated October 1972, and Unit 2 dated March 1978.

Agencies and Persons Consulted

In accordance with its stated policy, on August 22, 1997, the staff consulted with the Georgia State official, Mr. James Setser of the Environmental Protection Division, Georgia Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission has determined not to prepare an environmental impact statement for the proposed exemption. Accordingly, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated July 2, 1997, 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 Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 15th day of September 1997.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–25081 Filed 9–19–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 AND 50–339]

Virginia Electric and Power Company; North Anna Power Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the provisions of 10 CFR 70.24(a) to Virginia Electric and Power Company (the licensee) for North Anna Power Station, Units 1 and 2 (NPS1&2), located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24(a), which require a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material (SNM) is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated January 28, 1997, as supplemented March 24, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24(a) is to ensure that if a criticality were to occur during the handling, use, or storing of SNM, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The SNM that could be assembled into a critical mass is in the form of nuclear fuel. The quantity of other forms of special nuclear materials that is stored onsite is small enough to preclude achieving critical mass. Since the fuel is not enriched beyond 4.3 weight percent Uranium-235 and commercial nuclear power plant licensees have procedures and features that are designed to prevent inadvertent criticality, the staff has determined that inadvertent criticality is not likely to occur during the handling of the special nuclear material. The requirements of 10 CFR 70.24(a), therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power plants.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through the design of the fuel racks providing geometric spacing of fuel assemblies in their storage locations, compliance with the NPS Technical Specifications (TS), and administrative controls imposed on fuel handling procedures.

Appendix A of 10 CFR Part 50, ''General Design Criteria for Nuclear Power Plants,'' Criterion 62, requires that criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically safe configurations. This is met at NPS1&2, as identified in section 5.6 of the TS. Section 5.6.1.1 of the TS states the geometrically safe configurations for new fuel stored in the new fuel pit storage racks or spent fuel storage racks.

The new fuel storage area at North Anna is used to receive and store new fuel in a dry condition upon arrival onsite and prior to loading into the reactor. The new fuel is stored vertically in an array with a distance of 21 inches between assemblies to assure K_{eff} is less than or equal to 0.98 with fuel of the highest anticipated enrichment in place assuming optimum moderation, e.g., an aqueous foam envelopment as a result of local fire fighting operations. Both irradiated and unirradiated fuel are moved to and from the reactor vessel and the spent fuel pool to accommodate refueling operations, as well as within the reactor vessel and spent fuel pool. Unirradiated fuel is also moved into the Fuel Building for storage and to and from the new fuel storage area. In every case, fuel movement is procedurally controlled and designed to preclude criticality concerns. In addition, the TS specifically address refueling operations and impose restrictions on fuel movement to preclude an accidental criticality, as well as limit the movement of certain loads over the spent fuel in the reactor vessel and the spent fuel pool.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological effluents nor cause any significant occupational exposures since the TS, design controls, including geometric spacing of fuel assembly storage spaces, and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff has considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to the operation of North Anna Power Station, Units 1 and 2, issued by the Commission in April 1973.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with Mr. Foldesi of the Virginia Department of Health on July 14, 1997, regarding the environmental impact of the proposed action. Mr. Foldesi had no comments on behalf of the Commonwealth of Virginia.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for exemption dated January 28, 1997, as supplemented March 3, 1997, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland this 16th day of September, 1997.

For The Nuclear Regulatory Commission.

Gordon E. Edison,

Acting Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–25079 Filed 9–19–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Reactor Fuels, Onsite Fuel Storage, and Decommissioning; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels, Onsite Fuel Storage, and Decommissioning will hold a meeting on October 9, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, October 9, 1997—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the basis of the NRC proposed fuel failure criterion for high burnup conditions, and the behavior and adequacy of NRC fuel codes under accident conditions. The Electric Power Research Institute representatives will present their views on this matter. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Electric Power Research Institute, Nuclear Energy Institute, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: September 15, 1997.

Noel F. Dudley

Acting Chief Nuclear Reactors Branch.

[FR Doc. 97–25076 Filed 9–19–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22822; 812–10736]

Liberty All-Star Growth Fund, Inc.; Notice of Application

September 15, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant requests an order under section 6(c) of the Act granting an exemption from section 19(b) and under rule 19b–1 to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of its net asset value.

FILING DATE: The application was filed on July 23, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 9, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, DC 20549. Applicant, 600 Atlantic Ave., Federal Reserve Plaza, Boston, MA 02210.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a closed-end management investment company organized as a Maryland corporation. Applicant's investment objective is to invest primarily in a diversified portfolio of equity securities.

2. On February 20, 1997, applicant adopted a distribution policy (the ''Distribution Policy'') that calls for quarterly distributions of 2.5% of applicant's net asset value at the time of declaration, for a total of approximately 10% of net asset value per year. If the total distributions required by the Distribution Policy exceed applicant's investment income and net realized capital gains, the excess will be treated as a return of capital. If applicant's net investment income, net short-term realized gains and net long-term realized gains for any year exceed the amount required to be distributed under its Distribution Policy, applicant at its discretion may retain, and not distribute, net realized long-term capital gains to the extent of such excess.

3. Applicant states that the distributions will provide a steady cash flow to shareholders, and, during periods when their per share net asset value is increasing, a means for shareholders to receive on a regular basis some of the appreciation in value of their shares. Applicant also believes that the Distribution Policy plays a role in reducing the discount from net asset value at which applicant's shares typically trade.

4. Applicant requests relief to permit applicant to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of its net asset value.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant asserts that the limitation on the number of net long-term capital gains distributions in rule 19b–1 prohibits applicant from including available net long-term capital gains in certain of its fixed quarterly distributions. As a result, applicant states that it must fund these quarterly distributions with returns on capital (to the extent net investment income and realized short-term capital gains are insufficient to cover a quarterly distribution). Applicant further asserts that, in order to distribute all of its long-term capital gains within the limits on the number of long-term capital gains distributions in rule 19b–1, applicant may be required to make certain of its quarterly distributions in excess of the total annual amount called for by the Distribution Policy. Alternatively, applicant states that it may be forced to retain long-term capital gains and pay the applicable taxes. Applicant asserts that the application of rule 19b–1 to its Distribution Policy may cause anomalous results and create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. Applicant believes that the concerns underlying section 19(b) and rule 19b–1 are not present in applicant's situation. One of these concerns is that shareholders might not be able to distinguish between frequent distributions of capital gains and dividends from investment income. Applicant states that the Distribution Policy has been disclosed in applicant's communications to its shareholders, including its 1996 annual report, and applicant will disclose the Distribution Policy in future quarterly and annual reports to shareholders. Applicant further states that, in accordance with rule 19a-1 under the Act, a separate statement showing the source of the distribution (net investment income, net realized capital gain or return of capital) will accompany each distribution (or the confirmation of the reinvestment under applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of each quarterly distribution received during the year will be included with applicant's IRS Form 1099–DIV report sent to each shareholder who received distributions during the year (including shareholders who sold shares during the year). Applicant believes that its shareholders fully understand that their distributions

are not tied to applicant's net investment income and realized capital gains and do not represent yield or investment return.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper sales practices, including in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividend''), when the distribution would result in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end investment companies, such as applicant, which do not continuously distribute shares.

5. Applicant states that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. Applicant asserts that it will continue to make quarterly distributions regardless of whether capital gains are included in any particular distribution.

6. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicant believes that the requested relief satisfies this standard.

Applicant's Condition

Applicant agrees that the order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by applicant of its shares other than: (i) a non-transferable rights offering to shareholders of applicant, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and (ii) an offering in connection with a merger, consolidation, acquisition, or reorganization.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25029 Filed 9–19–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39079; International Series Release No. 1099, File No. SR–Amex–96–38]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 Thereto by the American Stock Exchange, Inc., Relating to the Listing and Trading of Warrants on the ING Barings Securities Limited BEMI Latin America Index

September 15, 1997.

I. Introduction

On October 15, 1996, the American Stock Exchange, Inc. (''Amex'' 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] the proposed rule change to list and trade warrants on the ING Barings Securities Limited BEMI Latin America Index (''Index'').[3] A notice appeared in the **Federal Register** on November 21, 1996.[4] No comment letters were received concerning the proposed rule change. On December 24, 1996, March 3, 1997 and June 3, 1997, the Exchange filed Amendment Nos. 1, 2 and 3, respectively, to the proposed rule change.[5] This order approves the Amex's proposal, as amended.

II. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade, under Section 106 of the Amex *Company Guide*, cash-settled index warrants based on the Index.

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37960 (November 15, 1996).

[4] *See* 61 FR 59261.

[5] *See* Letters from Claire P. McGrath, Managing Director & Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Division of Market Regulation (''Division''), SEC, dated December 23, 1996 (''Amendment No. 1''), February 28, 1997 (''Amendment No. 2''), and June 3, 1997 (''Amendment No. 3''), respectively. Amendment No. 1, sets forth, among other things, the definition of ''available capitalization,'' the calculation formula for the Index and the foreign stock exchanges with which the Amex has comprehensive surveillance sharing agreements. In Amendment No. 2, the Amex provides for each Index component, the average daily trading volume for the six month period ending December 31, 1996 and their weights in the Index. In Amendment No. 3, the Amex provides Index maintenance standards.

A. Design of the Index

The Exchange represents that the Index is a market capitalization-weighted broad-based index developed by ING Barings Securities Limited (''Barings'') comprised of 122 stocks from 112 companies from the following seven Latin American countries: Argentina; Brazil; Chile; Colombia; Mexico; Peru; and Venezuela.[6] In addition, the stocks represent eleven different industry groups. As of June 30, 1997, the number of stocks and weightings in the Index was as follows: Argentina 22 stocks/12.63% weighting; Brazil 22 stocks/46.84% weighting; Chile 21 stocks/11.20% weighting; Columbia 12 stocks/1.50% weighting; Mexico 26 stocks/21.76% weighting; Peru 12 stocks/3.90% weighting; and Venezuela 7 stocks/2.16% weighting. As of the same date, the largest stock accounted for 10.95% of the Index weight, while the smallest accounted for 0.016%. The top five stocks in the Index by weight accounted for 32.15%.

The total available market capitalization of the Index was $158,437,566,290 billion on that date.[7] The average available market capitalization of these companies was $1,298,668,576 billion. The individual available market capitalization of the companies ranged from $25,050,774 million to $17,343,762,504 billion.

B. Maintenance of the Index

The Index is maintained by Barings' Recomposition Committee. The Recomposition Committee, established at the time of the launch of the Index, reviews on a quarterly basis the Index rules and composition. The Recomposition Committee implements changes or fixes standards as appropriate and oversees the security environment of the Index and its record-keeping. The quarterly meeting is normally held in the second week of the last month of the quarter. The date of these meetings is posted at least two months in advance on Reuters and the results are publicly disclosed on Reuters the day after a meeting. Actual implementation of any changes to the composition of the Index occurs on the last day of the month that the meeting is held. This is approximately two

[6] The Index is a sub-index of the Barings Emerging Markets Index (''BEMI'').

[7] A company's ''available capitalization'' is defined as the lower of (i) the company's ''free float'' or (ii) the legally available capitalization of the company. A company's ''free float'' is defined as the percentage of shares which could reasonably be expected to trade on the open market. Generally, government holdings, corporate cross-ownership and other strategic holdings are not considered freely floating.

weeks after the Recomposition Committee has met and the changes to the Index have been publicly announced.

Exceptionally, in the case of new issues, privatizations and takeovers, a stock can be introduced to or deleted from the Index without waiting for the next quarterly meeting. In these cases, the decision to include or remove a stock is taken by an ad hoc meeting of members of the Recomposition Committee in accordance with established rules. New companies resulting from a spin-off of a component company will be put into the Index and remain in the Index until the next quarterly recomposition meeting. The Amex notes that Barings will adjust the Index divisor, if necessary, in order to ensure Index continuity.[8]

The stocks selected for inclusion in the Index were chosen on the basis of both country and company criteria. To be included in the Index, a country must have a minimum Gross Domestic Product per capita of $400 and a minimum market trading value of $2 billion per year in at least one of the last three years. The companies included in the Index are drawn from a database of stock entities, which may represent individual companies in their entirety, or separate classes of stock (*e.g.*, A shares and B shares, of the same company). The criteria for stock entities to be included are: capitalization value greater than 1% of the Barings database for that country; minimum free float of 10%;[9] and minimum average daily trading value of $100,000. In addition, shares that rank first or second in their industry sector may be included if they have a minimum capitalization of 0.5% of the Barings database for that country and meet the normal free-float and daily trading value rules.

The Amex notes that Barings will maintain the Index to ensure that no more than 10% of the index weight is represented by stocks that do not have a minimum average daily trading value, on a rolling four quarter basis, of US$200,000.[10] In addition, no more than 5% of the index weight will be represented by stocks that fall below US$100,000 average daily trading value on a semi-annual basis.[11] If the Index fails to meet either of these standards, the Index will be rebalanced by removing the requisite stocks.

In addition, Barings maintains the Index to ensure that no single stock comprises more than 20% of the Index weight and no five stocks comprise more than 50% of the Index weight. If the Index fails to satisfy this maintenance requirement, the Exchange will apply margin requirements for stock index industry group warrants.[12]

Barings has created special procedures to prevent material non-public information from being improperly used by its research, sales and trading divisions in connection with the maintenance of the Index. Specifically, membership of the Recomposition Committee is regulated by a ''Fire Wall.'' All members are isolated from sales, trading and corporate finance functions. Members are drawn from Index research, calculation, legal and compliance departments of Barings. To ensure impartiality and good practice, the committee has retained Russell Systems Limited (''Russell''), part of the Frank Russell Group, to attend all meetings and to provide an audit of attendance and appropriateness of the agenda. Russell also provides advice on good practice in indexation and on how to ensure the use of the best available information on emerging markets.

C. Trading of the Index Warrants

Currently, the Amex is seeking authority to list and trade only a single issuance of warrants on the Index which have a term of less than five years.[13] The Index warrants will be direct obligations of their issuer subject to cash-settlement during their term and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date if not exercisable prior to such date, the holder of a warrant structured as a ''put'' would receive payment in U.S. dollars to the extent the Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a ''call'' would, upon exercise or at expiration, receive payment in U.S. dollars to the extent the Index has increased above the pre-stated cash settlement value. If out-of-the-money at the time of expiration, the warrants would expire worthless.

In addition, the Amex has adopted account approval standards covering transactions in customer accounts as the suitability standards applicable to recommendations to purchasers of index warrants. Amex Rule 411, Commentary .02 recommends that index warrants under Section 106 of the *Company Guide* be sold only to investors whose accounts have been approved for options trading pursuant to Rule 921. The suitability requirements under Amex Rule 923 apply to recommendations in index warrants both with respect to customer accounts that have been approved for options trading and customer accounts that have not been so approved. Under these requirements, the person recommending a purchase of the Index warrants should have a reasonable basis for believing that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the position in the option contract. Amex Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered.

D. Calculation and Dissemination of the Value of the Index

The Index was first calculated on January 7, 1992 with a benchmark value of 100. As of June 30, 1997 the Index had a value of 203.825. The Amex disseminates the Index value every 15 seconds throughout the trading day over the Consolidated Tape Association's Tape B. The Amex, however, does not have real-time data feeds from the exchange that trade the component securities in Colombia, Peru and Venezuela. As a result, for those component securities that trade in Colombia, Peru and Venezuela, the previous day's last sale price, converted into U.S. dollars using Reuters 4 p.m. EST exchange rates, is used to calculate the Index value. If a security from a non-real-time reporting country, however, has options eligible American Depositary Receipts (''ADRs'') that trade on the New York Stock Exchange (''NYSE''), the ADR's real-time NYSE price is used to calculate the Index value.

As a result, the Index value is calculated so that stocks representing no more than 7% of the Index weight

[8] *See* Amendment No. 1, *supra* note 5.

[9] *See* note 7 *supra* for a definition of free float.

[10] A ''rolling four quarter basis'' is defined to mean that a stock will be reviewed each quarter to determine if it has maintained an average daily trading value of US$200,000 for the combined previous four quarters. For example, a security is reviewed at the beginning of the third quarter of 1997 and it maintained an average daily trading value of US$200,000 during the second and first quarters of 1997 and the fourth quarter of 1996 but it did not maintain such an average during the third quarter of 1996. The security may be removed if the figures from the third quarter of 1996 reduce the average daily trading value below US$200,000 for the combined four quarter period.

[11] In contrast to a rolling four quarter review, component securities will be reviewed twice a year to determine if they meet this standard.

[12] *See* Amex Rule 462.

[13] *See* note 22 *infra*.

report non-real-time prices.[14] If the Index fails to meet this standard, the Index will be rebalanced at the quarterly Recomposition Committee meeting by removing the requisite stocks to permit the Index to meet this standard. In the event a component security in the Index does not open for trading, however, the most recent closing value for that component will be used in the Index's calculation.

In the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, reorganization, recapitalization or similar event with respect to the component stocks, the Index divisor will be adjusted, if necessary, to ensure Index continuity.[15]

E. Warrant Listing Standards and Customer Safeguards

The Exchange represents that the listing and trading of warrants based on the Index will comply in all respects with the Amex warrant listing standards. Under Section 106 of the Amex *Company Guide*, the Exchange may approve for listing index warrants based on foreign and domestic market indices. In addition, the listing and trading of warrants on the Index will comply in all respects to Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants. As discussed below, these standards govern issuer eligibility, position and exercise limits, reportable positions, settlement, automatic exercise, margin and trading halts and suspensions.[16]

Under Section 106(a) of the Amex *Company Guide*, issuers are required to have minimum tangible net worth in excess of $250 million or, in the alternative, to have a minimum tangible net worth in excess of $150 million, provided that the issuer has not, including as a result of the proposed issuance, issued outstanding warrants where the aggregate original issue price of all such warrant offerings, combined with offerings by its affiliates, listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the warrant issuer's net worth. In addition, Sections 106(b) and 106(c) of the Amex *Company Guide* require that warrant issues have a term of one to five years and have a minimum public distribution of one million warrants together with a minimum of 400 public holders and an aggregate market value of $4 million.

Under Amex Rule 1107, no member can hold or control an aggregate position in a stock index warrant issue, or in all warrants issued on the same stock index, whether long or short, on the same side of the market, in excess of 15 million warrants with an original issue price of ten dollars or less. Stock index warrants with an original issue price greater than ten dollars will be weighted more heavily in calculating position limits. Amex Rule 1108 established exercise limits on stock index warrants analogous to those found on stock index options. Accordingly, no member, acting alone or in concert with others, directly or indirectly, may exercise a long position in warrants within five consecutive business days in excess of the permissible position limit. In addition, such limits are separate and distinct from any exercise limits that may be imposed by the issuers of stock index warrants.

Under Amex Rule 1110, members are required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position, whether long or short, of 100,000 warrants overlying the same index, currency, or currency index.

Under Section 106(d) of the Amex *Company Guide*, currency and index warrants must be cash-settled in U.S. dollars. The procedures for determining the cash settlement value for the warrants have not yet been determined by Barings.[17] Once those procedures have been determined by Barings, they will be fully set forth in the prospectus and in the Information Circular distributed by the Exchange to its membership prior to the commencement of trading the warrant.

Under Section 106(f) of the Amex *Company Guide*, all unexercised warrants that are in-the-money will be automatically exercised on their expiration date or on or promptly following the date on which the warrants are delisted by the Exchange, provided that such warrant issue has not been listed on another organized securities market in the United States.

In general, the margin requirements for long and short positions in stock index warrants are the same as the margin requirements for long and short positions in stock index options. Accordingly, the purchase of a stock index warrant will require payment in full and the short sale of a stock index warrant will require margin of 100% of the current value of the warrant plus 15% of the current value of the underlying index less the amount by which the warrant is out-of-the-money, but not less than 10% of the index value.[18]

F. Surveillance

The Amex notes that although it does not have comprehensive surveillance sharing agreements (''CSSAs'') with all seven countries represented in the Index, it does comply with section 106(g) of the Amex *Company Guide*. Section 106(g) of the *Company Guide* states that foreign country securities or ADRs thereon that are not subject to a CSSA, and have less than 50% of their global trading volume in dollar value within the United States, shall not in the aggregate, represent more than 20% of the weight of an index, unless such index is otherwise approved for warrant or option trading. The Commission has Memoranda of Understanding with government authorities in Argentina, Brazil, Chile and Mexico. The Exchange has CSSAs with the securities markets and/or self-regulators in Argentina, Brazil and Chile. The Amex notes that the Commission previously has permitted U.S. derivatives markets to list derivatives on securities where the home market for such securities is located in Argentina, Brazil, Chile and Mexico based upon the Commission's and the Exchange's information sharing arrangements with the appropriate government or self-regulatory authorities in such countries.[19]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change by the Exchange is consistent with the requirements of the Act and the rules and regulations

[14] The Commission believes that the most current last sale prices for each component stock should be used in calculating the Index value. Nevertheless, because of the difficulty in receiving timely information from the three countries noted above, the Commission has decided to permit the use of the previous day's closing price for a number of Index components as long as their weight remains relatively minor and in no case more than 7% of the Index weight. The Commission notes that a proposal to list and trade derivative instruments overlying an index that had more than 7% of its component securities reporting non-real-time prices would raise questions regarding whether that particular index and any derivative instruments overlying it would be susceptible to manipulation.

[15] *See* Amendment No. 1, *supra* note 5.

[16] *See* Amex Rules 1109 and 918(c) for the regulations regarding trading halts and suspensions.

[17] The Amex notes that the procedures for determining the cash settlement value of the warrants will be in accordance with its listing criteria for warrants. In the event that such procedures do not comport with established requirements, the Amex will notify the Commission, prior to implementing such procedures, in order to determine the proper regulatory response.

[18] *See* Amex Rule 462, *supra* note 12.

[19] As of June 30, 1997, component securities from these four countries comprised 92.44% of the Index weight.

thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.[20] Specifically, the Commission finds that the listing and trading of warrants based on the Index will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with the Latin American equity markets[21] and promote efficiency, competition, and capital formation.[22]

Nevertheless, the trading of warrants on the Index raises several concerns related to the design and maintenance of the Index, customer protection, surveillance and market impact. The Commission believes, however, for the reasons discussed below, that the Amex has adequately addressed these concerns.[23]

A. Design and Maintenance of the Index

The Commission finds that it is appropriate and consistent with the Act for the Amex to designate the Index as Broad-based for warrant trading. First, the Index is composed of 112 companies from 11 industry groups including: consumer goods, energy, capital equipment, basic materials, agriculture/food and financial services. Second, no particular stock or group of stocks dominates the Index. Specifically, as of June 30, 1997, the largest stock accounted for 10.95% of the Index weight, while the smallest accounted for 0.016%. The top five stocks in the Index by weight accounted for 32.15%. Accordingly, the Commission believes that it is appropriate to classify the Index as broad-based so that the Exchange may list warrants for trading pursuant to the Amex warrant listing standards for broad-based indices.

The Commission notes that with respect to the maintenance of the Index, Barings has implemented several safeguards in connection with the listing and trading of the index warrants that will serve to ensure that the Index is a highly capitalized, diversified and actively-traded index. In this regard, Barings will maintain the Index so that: (1) No single stock may comprise more than 20% of the Index weight and no five stocks may comprise more than 50% of the Index weight; (2) no more than 7% of the Index weight may report non-real-time prices in calculating the Index value (in addition, NYSE prices will be used for options eligible ADRs for securities from non-real-time reporting countries); (3) no more than 10% of the index weight may be represented by stocks that do not have a minimum average daily trading value, on a rolling four quarter basis, of US$200,000[24] and (4) no more than 5% of the Index weight may be represented by stocks that fall below US$100,000 average daily trading value on a semi-annual basis. If the 20% single stock, 50% top five stock standard is not maintained, then the Exchange will re-classify the Index as narrow-based and would, among other things, impose minimum margin requirements for stock index industry group warrants.

In particular, the Commission believes that the real-time reporting of simultaneously traded index component securities that underlie an exchange-traded index component securities that underlie an exchange-traded derivatives product is an important element for the intra-day pricing of derivatives products, the reduction of potential market manipulation and other trading abuses. While not all of the Index's component securities report real-time prices, the Commission believes that the Exchange has reasonably addressed this concern by noting that no more than 7% of the Index weight, a *de minimis* amount, may report non-real-time prices. The Commission notes that if the Index fails to satisfy the 7% non-real time price reporting requirement or the minimum trading value requirements, Barings immediately will rebalance the Index by removing the requisite stocks.[25]

In addition, the Commission notes that Barings has adopted appropriate procedures to be followed by those responsible for maintaining the Index in order to help prevent and deter the misuse of any informational advantages with respect to changes in the composition of the Index. Such procedures include, for example, informational barriers.

B. Customer Protection

The Commission notes that the rules and procedures of the Exchange adequately address the special concerns attendant to the trading of index warrants. Specifically, the applicable suitability, account approval, disclosure and compliance requirements of the Amex warrant listing standards satisfactorily address potential public concerns. Moreover, the Amex plans to distribute a circular to its membership calling attention to specific risks associated with warrants on the Index. Pursuant to the Exchange's listing guidelines, only companies capable of meeting the Amex's index warrant issuer standards will be eligible to issue Index warrants. In addition, the Amex presently is seeking authority to list and trade only a single issuance of warrants on the Index which have a term of less than five years.

C. Surveillance

In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation. It is for this reason that the Commission requires that there be a CSSA in place between an exchange listing or trading a derivative product and the exchanges trading the stocks underlying the derivative contract that specifically enables officials to survey trading in the derivative product and its underlying stocks.[26] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

[20] 15 U.S.C. 78f(b)(5).

[21] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[22] 15 U.S.C. 78c(f).

[23] The Commission also notes that the Amex presently is only seeking the authority to list and trade a single issuance of warrants on the Index and that if the Exchange proposes to list and trade other products based on the Index, including other Index warrants, the Exchange will advise the Commission in order to determine whether a rule filing pursuant to Section 19(b) of the Act will be necessary and appropriate.

[24] *See* note 10 *supra*.

[25] *See* note 14 *supra*.

[26] The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a CSSA. A CSSA should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a CSSA require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity and customer identity. *See* Securities Exchange Act Release No. 31529 (November 27, 1992).

In order to address the above noted concerns and to comply with Section 106(g) of the Amex *Company Guide,* the Amex has entered into information sharing arrangements with the Buenos Aires Stock Exchange in Argentina, the Sao Paolo Stock Exchange in Brazil, and the Santiago Stock Exchange in Chile. In addition, the SEC has memoranda of understanding with: the Comision Nacional de Valores in Argentina; the Comissao de Valores Mobiliarios in Brazil; the Superintendencia de Valores y Seguros in Chile; and the Comision Nacional Bancaria y de Valores in Mexico. As of June 30, 1997, stocks from Argentina, Brazil, Chile, and Mexico represent 92.44% of the Index weight. As a result, no single uncovered country represents more than 3.90% of the Index weight and not two uncovered countries represent more than 6.06% of the Index weight.

D. Market Impact

The Commission believes that the listing and trading of Index warrants on the Amex should not adversely impact the securities markets in the U.S. or Latin America. First, the existing index warrant surveillance procedures of the Amex will apply to warrants based on the Index. Second, the Commission notes that the Index is broad-based and diversified and includes highly capitalized securities that are actively traded in their home markets.[27] Accordingly, the Commission does not believe that the introduction of Index warrants on the Amex will have a significant effect on the underlying Latin American securities markets.

For the reasons described above, the Commission finds good cause to approve Amendment Nos. 1, 2 and 3, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 provides, among other things, the definition of ''available capitalization,'' the calculation formula for the Index and the foreign stock exchange with which the Amex has surveillance sharing agreements. Amendment No. 2 provides the average daily trading volume for the six month period ending December 31, 1996 and the weights of the Index components. Lastly, Amendment No. 3 adds several maintenance standards that the Commission believes strengthen the Amex proposal by ensuring that the Index remains broad-based and is comprised of relatively well-capitalized and liquid securities. No single stock may comprise more than 20% of the Index weight and no five stocks may comprise more than 50% of the Index weight. In addition, no more than 7% of the Index weight may report non-real-time prices in calculating the Index value. NYSE prices will be used for options eligible ADRs for securities from non-real-time reporting countries. The Commission believes that this standard will ensure that a substantial portion of the Index value will be calculated using current prices.[28]

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)[29] of the Act, to find that good cause exists to approve Amendments Nos. 1, 2 and 3, on an accelerated basis.

IV. Solicitation of Comments and Conclusion

Interested persons are invited to submit written data, views and arguments concerning Amendments Nos. 1, 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–96–38 and should be submitted by October 14, 1997.

For the foregoing reasons, the Commission finds that the Amex's proposal to list and trade warrants based on the Barings BEMI Latin America Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b) (2) of the Act, that the proposed rule change (SR–Amex–96–38), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25025 Filed 9–19–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39065; File No. SR–DCC–97–03]

Self-Regulatory Organizations; Delta Clearing Corp.; Order Approving Proposed Rule Change Regarding the Clearing of the Off-Date Portion of Repurchase Agreements

September 12, 1997.

On March 11, 1997, Delta Clearing Corp. (''Delta'') filed with the Securities and Exchange Commission (''Commission'') and on May 7, 1997, and May 29, 1997, amended a proposed rule change (File No. SR–DCC–97–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 18, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends Delta's procedures for repurchase agreements and reverse repurchase agreements (''Repo Procedures'') to permit Delta to clear the off-date portion of a repurchase agreement (''repo'') transaction whose on-date portion has been cleared outside of Delta. Delta's Repo Procedures now provide that Delta may assume the obligation to clear solely the off-date portion of a repo transaction (''novated repo'') subject to: (1) The receipt by Delta of matching trade reports from the parties to the trade or from authorized broker,[3] as applicable and (2) Delta's confirmation of the prior execution and clearance of the on-date portion of such repo transaction.

Section 2401 of the Repo Procedures sets forth time periods for participants to report on-date transactions to enable Delta to clear such transactions by settlement time. Section 2401 is amended to provide that the time periods for reporting transactions set

[27] As the Amex notes, while some of the stocks in the Index have relatively low trading volume, they account for only a small percentage of the Index weighting.

[28] *See* note 14 *supra.*

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38736 (June 11, 1997), 62 FR 33145.

[3] Pursuant to Delta's rules, Delta will clear and settle repo transactions that have been entered into directly between two participants or entered into by two participants through the facilities of a broker that has been specifically authorized by Delta for such purpose.

forth in the first paragraph of Section 2401 do not apply to novated repos. Instead, as a condition for Delta to assume on such business day the obligation to clear the off-date portion, novated repos must be reported to Delta by 5:00 p.m. on any business day prior to the settlement day of the off-date portion. However, if the settlement day of the off-date portion is the next business day following the business day on which a novated repo is reported to Delta, such novated repo must be reported to Delta prior to 2:15 p.m. so that Delta will be able to collect margin related to the transaction in a timely manner.[4]

Section 2507 is added to the Repo Procedures to clarify that provisions relating to on-date settlement do not apply to novated repos. Similarly, Sections 2801 and 2802 are amended to clarify that no delivery of collateral or payment of net money through Delta is required on the on-date of a novated repo.

Finally, Section 2904 is added to the Repo Procedures to provide that Delta may accept novated repos for clearance. Section 2904 provides that a participant's net exposure resulting from the assumption by Delta of a novated repo on any business day will be included for purposes of calculating the margin required to be deposited by the participant by 11:00 a.m. of the following business day pursuant to Article XXVI of the Repo Procedures relating to margin. If Delta assumes by 5:00 p.m. the obligation to clear the off-date portion of a novated repo, any margin required from a participant as a result of the participant's net exposure resulting from Delta's assumption of such novated repo will have to be deposited by the participant on or before 11:00 a.m. on the next day. However, if a novated repo has an off-date which is the next business day following the business day on which the novated repo is reported to Delta, such novated repo is treated as an overnight repo for margin collection purposes.[5]

II. Discussion

Section 17A(b)(3)(F)[6] of the Act requires that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with section 17A(b)(3)(F). The proposal will allow more trades to be cleared through Delta's clearance and settlement system. Such trades will receive the benefit of Delta's guarantee and automated settlement capabilities. Because of Deltas netting of transactions, the proposal also may reduce the number of securities movements needed to settle transactions. By reducing the number of trades settled ex-clearing, the proposal should assist in the prompt and accurate clearance and settlement of repo transactions consistent with section 17A(b)(3)(F).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DCC–97–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[4] Section 2401 also is amended to require that overnight repo transactions be reported to Delta prior to 2:15 p.m. Overnight repos and novated repos reported one day prior to settlement will be margined in the same manner. *See infra* note 5.

[5] Delta sends a supplemental daily margin report to members at 2:30 p.m. each day that indicates the amount of margin a member must deposit prior to 3:00 p.m. that day. The margin is based on an intraday mark-to-market calculation based on overnight repos.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39068; File No. SR–GSCC–97–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Election of Directors

September 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on July 23, 1997, the Government Securities Clearing corporation ("GSCC") filed with the Securities and Exchange Commission (the "Commission") and on August 18, 1997, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC is filing the proposed rule change to amend its Shareholder Agreement ("Agreement"), By-laws, and Certificate of Incorporation in order to revise GSCC's procedures for election of directors and to revise restrictions currently placed on transfers of GSCC's securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC recently completed a comprehensive review of its Agreement, By-laws, and Certificate of Incorporation. Pursuant to that review, GSCC proposes to amend the Agreement, By-laws, and Certificate of Incorporation as described below.[3]

1. Background

The Agreement was first executed in 1988 before GSCC had a set of rules in place and before there was any business history on which to base certain provisions of the Agreement. Consequently, the Agreement covers a broad range of issues, including certain business matters not found in most shareholder agreements. For example, the Agreement includes provisions relating to loss allocation procedures, which are now comprehensively covered by GSCC's rules.

Moreover, since 1988 there have been many significant changes in GSCC's services and membership and in the government securities marketplace in

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] GSCC currently has forty-six shareholders, each of which is a party to the Agreement. The National Securities Clearing Corporation ("NSCC"), is the largest shareholder, holding approximately eighteen percent of GSCC's shares.

general making the Agreement inadequate to meet the realities of that marketplace and GSCC's business as it is conducted today. For example, when the Agreement was drafted, participation in the interdealer broker government securities marketplace was limited exclusively to primary and aspiring primary dealers and their brokers. Therefore, the Agreement contemplates only primary dealers, aspiring primary dealers, and brokers as participants in GSCC. Today, there is a much broader range of participation in the interdealer broker government securities marketplace, including nonprimary dealers and nondealers.

Furthermore, GSCC believes that the Agreement sets forth a great number of fixed standards relating to corporate governance and shareholder rights, particularly related to participation on the board of directors and the issuance and sale of shares, that are unnecessarily and overly specific and rigid and that do not best serve the interest of GSCC members, shareholders, and the industry in general. For example, the Agreement currently allows for only a set number of board seats for each category of dealer, broker, and clearing agent bank. As described below, the proposed revisions would provide for the addition of an ''at-large'' director seat in lieu of one of the clearing agent bank seats, which would allow for participation on the board by an individual from a nonmember firm. Also, certain proposed revisions will allow for much greater transferability of GSCC shares, including shares held by entities that are no longer involved in the government securities marketplace or that are no longer in business.

Finally, the proposed revisions will allow for more flexibility of action by GSCC to meet future business needs, including potential matters such as business partnerships and acquisitions. Thus, they would provide more flexibility to GSCC in its business planning and make the Agreement a more dynamic, ''living'' document.

2. Proposed Changes

As described more fully below, the proposed changes fall under four major categories: (a) nomination and election process for board members, (b) composition of the board, (c) restrictions on issuance and transfer of shares, and (d) miscellaneous.

(a) *Nomination and Election Process for Board Members.* The current nomination process for participant directors is open to all members with every member being able to nominate any shareholder member, including itself. However, a member is restricted to submitting nominations only for its own correlative participant category (*i.e.*, broker participants nominate broker participant directors, clearing agent bank participants nominate clearing agent bank participant directors, and all other participants nominate dealer participant directors). The election process involves ballots being circulated to every member with such voting being similarly limited to one's own correlative participant category.

(i) *Creation of a Nominating Committee.* Similar to the process in place at NSCC and other clearing corporations, GSCC proposes to create a nominating committee that will be responsible for nominating candidates for election as participant directors to the board. NSCC will continue to nominate and to elect two directors to the board outside the nominating committee process. The board seat for a management representative and for the GSCC president will also remain outside the nominating committee process.

With respect to the composition of the nominating committee, it is proposed that the nominating committee be comprised of five individuals, a majority of which will be representatives from active participants and which may be but are not required to be former board members. With the exception of the initial nominating committee, GSCC proposes that there must be a one year break between serving on the board and serving on the nominating committee (*i.e.*, a year must pass between a board member's serving on the board and being eligible to serve on the nominating committee and likewise between a nominating committee member's serving on the nominating committee and being eligible to serve on the board).

With the exception of the first nominating committee, GSCC proposes that incoming nominating committee members be designated by the board taking into account but not being bound by the recommendations of current nominating committee members. GSCC also proposes that participant category be irrelevant for purposes of the selection of nominating committee members. However, as a general guideline, the individuals serving on the nominating committee will be reflective of GSCC's overall membership and potential membership base.

The term of a nominating committee member will be two years. There must be a one year absence from the nominating committee before a former committee member is eligible to serve again. The terms of nominating committee members will be staggered. For example, one class with three individuals will be designated in the first year for a two year term and another class with two individuals will be designated for a one year term. After these initial terms, both classes will serve for two year terms. Therefore, subsequent nominating committees will have two staggered classes of members.

(ii) *Nomination Process for Board Members.* GSCC proposes that there be two levels of nomination processes for board members. The first level will be a standard process for the nominating committee to name candidates for board seats. The second level will be a supplemental process to allow participants to formally nominate candidates in addition to those named by the nominating committee. As with the designation of nominating committee members described above, nominating committee members and participants will be able to nominate individuals in all participant categories, not only the committee member's or participant's own category.

In the standard nomination process, the nominating committee will nominate one nominee for each open participant director seat. The nominating committee will select candidates based on both suggestions solicited from participants as well as from its own deliberations. GSCC proposes that participants be provided an opportunity early in the nomination process to suggest one nominee for each open board seat. Participants will then be notified of the nominating committee's slate of candidates for open board seats.

After participants are notified of the nominating committee's selections, participants will be given the opportunity to suggest additional nominees pursuant to a formal supplemental nomination process. Specifically, participants will be invited to nominate additional nominees with a petition signed by the lesser of seven participants or five percent of GSCC's participants. Each participant will be limited to signing one petition for each open board seat.

(iii) *Election Process for Board Members.* Similar to the nomination process described above, there will also be two levels of election processes for participant directors. In the standard election process, which will be followed if no nominating petitions have been filed by participants, the nominating committee will certify to the shareholders the participant directors selected by the nominating committee. Shareholders will then be bound to cast their votes supporting the nominating committee selections at the annual meeting.

However, if participants have filed one or more formal nominating petitions, the supplemental election process will be followed. This process will involve circulating ballots to all participants and permitting them to cast their votes to fill each open participant director seat in the contested participant category or categories. GSCC proposes to eliminate the requirement that participants only may vote for directors of their participant category.

Participants will have the following voting entitlements: (i) active comparison only participants will be entitled to one vote per open board seat, (ii) active netting participants will be entitled to at least two votes per open seat, and (iii) active clearing agent bank participants will be entitled to two votes per open seat.[4] Supplemental voting entitlements will be allocated to netting members based on their level of clearing fund deposit. Each netting member will receive an additional two votes for approximately every ten million dollars of its clearing fund deposit up to a total of twelve votes.[5] Finally, cumulative voting rights will be removed.

(iv) *Vacancies on the Board.* Currently, the board appoints new directors to replace directors who resign or are removed. (NSCC designates the person to be appointed by the board if the vacating director was an NSCC director.) The replacement director must be in the same participant category as the vacating director. Such replacement directors serve on the board until the next annual meeting, at which point the current nomination and election process is followed to refill that board seat with a permanent replacement. This permanent replacement director then serves until the vacating director's original term would have expired.

GSCC proposes to retain the current replacement mechanism but to conform the nomination and election processes that occur at the annual meeting following the board's appointment of the replacement director with the revised nominating and election processes. For example, the nominating committee will select a nominee for the open replacement director's seat. If no participant petitions have been filed, shareholders will vote their shares to support the nominating committee's selection. If a participant petition has been filed, the participants will then elect the permanent replacement director.

(v) *Election Process for the Chairman of the Board.* Currently, there is no provision in the Agreement for selecting the chairman of the board. GSCC proposes that the incoming board based upon the recommendation of the outgoing executive committee will designate the chairman of the board. The chairman will be elected for a one year item with no overall term limit other than the six year term limit applicable to all participant directors.

(b) *Composition of the Board.* Currently, the Agreement provides for twelve participant directors consisting of a set number of directors from each of the three categories of participants. The categories and number of participants are six dealer participant directors, three broker participant directors, and three clearing agent bank participant directors. GSCC believes that the current composition is inadequate to meet the reality of GSCC's business as it is conducted today. For many years now, there have been only two clearing agent banks eligible to fill three director seats. Moreover, while all participants are eligible to nominate participant directors, not all participants are eligible to serve as participant directors. Thus, GSCC proposes to restructure the board's composition and the methodology used to fix its composition in a manner that will provide enough flexibility to reflect future demographic changes in GSCC membership.

GSCC believes that specific board composition requirements should be removed from the Agreement and that the Agreement should outline only broad parameters such as a maximum number of board seats and a minimum required number of categories of directors that will be represented. This will allow the Agreement to be a flexible, ''living'' document that will enable GSCC to deal readily with significant changes in its membership base, largest shareholders, and business relationships.

The By-laws will state that the composition of the board may be changed by majority vote of the shareholders or by majority vote of the board. In this manner, the board will be empowered to make changes within the Agreement's broad parameters, including changing the size or composition requirements of the board in order to reflect membership demographics and other criteria.[6]

GSCC believes that major changes in the board's composition are not now necessary because the current members, the vast majority of which are brokers, dealers, or banks, are adequately represented. However, GSCC proposes revisions to the Agreement and By-laws that will restructure and redefine the board's composition in order to ensure continued fair representation in the future and to ensure representation to those types of entities that are neither brokers, dealers, nor banks. As the most significant step towards that end, the dealer participant category will be replaced with a ''general user participant'' category to include more types of participants. In addition, one of the clearing agent bank director positions will be recategorized as a new ''at-large'' director position which will be filled by any person whose service as a board member will be beneficial to GSCC. The current board composition is fifteen directors, which will be recategorized as one management director, one at-large director, two NSCC directors, six general user participant directors, three broker participant directors, and two clearing agent bank directors.

In order to effect these changes, the proposal will amend certain definitions in the Agreement. ''Broker'' is currently defined as an entity regularly engaged in the business of effecting transitions specifically in treasury securities and specifically for the account of primary dealers and aspiring primary dealers. GSCC believes this definition is too narrow and limiting. Hence, GSCC proposes to broaden the definition of ''broker'' to include any entity regularly engaged in the business of effecting transactions in any securities eligible for processing by GSCC on behalf of participants. In a related matter, references to treasury securities in the Agreement generally will be changed to reference all securities eligible for GSCC services.

''Clearing agent bank'' is currently defined as any clearing bank regularly used by brokers, primary dealers, and aspiring primary dealers for the clearance and settlement of transactions in treasury securities. Under the proposal, ''clearing agent bank'' will be more broadly defined essentially to mean any commercial bank member of the Federal Reserve System that provides clearing services with respect to GSCC eligible securities on behalf of others for at least ten percent of GSCC's participants and that provides those services using its own Federal Reserve account.

''Dealer participant'' is currently defined as a primary dealer or an

[4] Affiliated members will be considered one participant for purposes of determining voting entitlements.

[5] The clearing fund of affiliated members will be aggregated to determine their number of votes.

[6] Before changing the number of directors, GSCC must file a proposed rule change with the Commission.

aspiring primary dealer that is a participant. Again, GSCC believes this definition is too narrow and limiting. Thus, GSCC proposes to use the term ''general user participant'' instead of ''dealer participant.'' In addition, GSCC proposes to use the corresponding term ''general user participant director'' instead of ''dealer participant director.'' The definition of general user participant will be broader than the current dealer member category defined in the rules in that it will include essentially any participant that is not a broker or clearing agent bank, including futures commission merchants and registered investment companies.

A related proposal will remove all references to primary and aspiring primary dealers from the Agreement. As noted above, restricting nonbroker participants to primary and aspiring primary dealers, the latter of which the Federal Reserve no longer recognizes, disenfranchises participants that nonetheless act in a traditional dealer capacity.

As noted above, GSCC proposes to add an at-large category of director to further fair representation. The use of this category will allow GSCC the flexibility to add to the board a representative from a type of member not already represented on the board or an individual from an entity that plays an important role in the government securities marketplace but is not a GSCC member or shareholder.

Finally, GSCC directors are currently limited to serving two consecutive three year terms on the board. GSCC is proposing to retain the current term limits for all but the vice chairman and management director, who will not have term limits. Furthermore, the Agreement will specify that there must be a one year absence from the board before a former director is eligible for a new overall six year term limit. GSCC proposes to retain the three staggered classes of directors. The By-laws will specify the categories of directors that compose each of the three classes.

(c) *Restrictions on Issuance and Transfer of GSCC Shares.* GSCC is subject to restrictions on the issuance and repurchase of its shares. In addition, GSCC's shareholders, including NSCC, are subject to restrictions on the transfer GSCC shares. The restrictions differ for Class A voting shares and Class B non-voting shares.

(i) *Restrictions on Shares.* One of the primary restrictions that GSCC would like to remove from its shares is the price restrictions. Generally, both Class A and Class B shares must be issues, sold, or transferred at a price of $500 per share. Only NSCC and GSCC, if selling shares it acquired from NSCC, are authorized to sell or transfer Class A shares for a price other than $500. GSCC proposes to remove this price restriction completely which will provide a great deal more flexibility to shareholders wishing to sell their shares. One exception to removing the price restriction will be that GSCC generally will not be able to sell shares at less than current book value.

GSCC currently may issue Class A shares only to participants not already holding Class A shares. GSCC proposes to provide itself more flexibility by being able to issue Class A shares to an existing Class A shareholder, participant, or affiliate of a participant.[7] This expansion will help GSCC broaden its shareholder base in an appropriate manner.

GSCC currently may issue Class B shares only to holders of Class A shares. However, the board recently stated its intention to repurchase the existing Class B shares when GSCC is determined to be adequately capitalized which is expected to occur by year end 1997. Because GSCC's intention is to repurchase and then cancel all its Class B shares, GSCC proposes to remove from the Agreement GSCC's authority to issue new Class B shares.

In addition, the Agreement contains restrictions on transfers of Class A shares by participant shareholders including a requirement that the Class A shareholder must transfer all of its Class A shares and that the transfer must be to a single participant not already holding Class A shares. GSCC proposes to make Class A shares more freely transferable by permitting sales to any existing Class A shareholder, participant, or affiliate of a participant in lots of 300 shares. However, no shareholder other than NSCC will be able to own more than five percent of Class A shares unless such shares are held as a result of acquisition, merger, or a comparable event. Similarly, holders of Class B shares can sell such shares only to participant shareholders in lots of 200 and only with GSCC's consent. GSCC proposes to authorize shareholders to sell Class B shares to any existing shareholder, participant, or affiliate of a participant in lots of 200 shares. This loosening of the transfer restrictions would provide a benefit to existing shareholders in the form of more flexibility in ownership. For example, it would allow shareholders that have multiple sets of GSCC shares by virtue of acquisitions or mergers to transfer the ownership of one or more share sets to an affiliated entity.

Currently, GSCC has a right of first refusal only with respect to NSCC's sale of its Class A shares. GSCC proposes to extend its right of first refusal to any sale or transfer of shares by any shareholder. GSCC may purchase such shares at the lesser of the agreed price or the current book value. GSCC may resell such securities for a price at least equal to the book value unless the board approves a lower price.

Unlike other shareholders, NSCC may sell any number of its Class A shares at any price to nonparticipants. However, GSCC has a right of first refusal to purchase any of NSCC's Class A shares for $500 per share. GSCC can then sell these repurchased Class A shares to participants not already holding Class A shares or to any person at any price if approved by GSCC's board. The proposed rule change will amend GSCC's right of refusal to require the sale price to be the lesser of book value or the negotiated price. Similar to its proposal with respect to the issuance of shares, GSCC's proposal will permit GSCC to sell repurchased Class A shares to any existing Class A shareholder, participant, or affiliate of a participant at a price equal to current book value.

With respect to shareholders other than NSCC, GSCC can request to purchase Class A shares from participant shareholders provided that each participant shareholder sells the same percentage of Class A shares as each other participant shareholder and NSCC continues to hold twenty percent of GSCC's Class A shares unless NSCC agrees otherwise. The Agreement currently provides that GSCC does not intend to repurchase outstanding Class A shares unless all Class B shares have been converted to Class A shares or have already been repurchased by GSCC. The proposal will allow GSCC to repurchase shares at current book value or at any price determined by the board.

Class B shares are also subject to restrictions on conversions. Participant shareholders can convert Class B shares to Class A shares only upon GSCC's request to convert. GSCC is only authorized to issue such a request in order to effect a transfer of converted shares to one or more participants that do not hold any Class A shares. Because GSCC's intention is to repurchase and then cancel all its Class B shares, GSCC proposes to delete the conversion provisions.

(ii) *Provision for Extraordinary Corporate Action.* The proposed changes to the Agreement will allow GSCC to issue shares in response to an

[7] If GSCC issues additional Class A shares, NSCC has the right to request that enough additional Class A shares be issued to it in order for NSCC to retain its twenty percent holdings in GSCC. The proposal will not change this provision.

extraordinary corporate action. For example, in the event GSCC engages in a joint business venture with another entity or enters into a profit sharing agreement with another entity, it will be able to issue Class A shares or a new class of shares. Pursuant to such an issuance, GSCC may exchange or transfer such shares for cash in any amount or for any noncash consideration.

(iii) *Shareholder Ceasing To Be a Participant.* Regardless of the class of shares, if a shareholder ceases to be a GSCC participant, GSCC has the discretionary right to repurchase its shares provided that GSCC repurchases all of the shares for $500 per share. However, GSCC is not obligated to repurchase such shares. Difficulties arise when a GSCC shareholder is no longer a participant due to insolvency or merger or because it no longer engages in the business of trading in government securities. In these types of instances, contacting the shareholder or obtaining required shareholder action such as shareholder votes is made more difficult.

GSCC proposes to expand its authorized process for dealing with situations where a shareholder no longer is a participant. GSCC proposes to amend its current authority to mandate repurchase of shares of such a shareholder at book value. However, the proposal also will authorize GSCC to offer to repurchase shares for any price determined by the board.

(d) *Miscellaneous Amendments.* There are a number of other provisions in the Agreement that GSCC proposes to amend including: (i) loss allocation provisions, (ii) specific time and name references, (iii) supermajority voting requirements, and (iv) changes in GSCC's business.

With respect to loss allocation, the Agreement currently has detailed loss allocation provisions that are redundant with the loss allocation provisions set forth in GSCC's rules. These loss allocation provisions represent business considerations that are not typically covered by a shareholder agreement. Therefore, because GSCC believes that the rules are inherently more flexible than the Agreement, GSCC proposes to delete the loss allocation provisions from the Agreement as they are more appropriately handled in the rules. Furthermore, according to GSCC, inconsistencies can be avoided by having the loss allocation provisions in only one document.

With respect to time and name references, there are a number of references that are no longer relevant to the Agreement. For example, there are provisions in the Agreement relating to shareholder meetings, classes of directors, and staggered elections. These developmental provisions make a number of references to procedures that had to be followed during the period between 1988 and 1991 at which time standard procedures went into effect. Similar to the time references, the Agreement specifically refers to NSCC in a number of sections and names a specific individual to hold one NSCC director seat and another specific individual to act as the management director for purposes of the 1988 annual meeting. GSCC propose to remove all timing references and procedures specific to the period between 1988 and 1991. In addition, GSCC proposes to remove the obsolete provision naming the specific individuals.

The Agreement now also sets forth a number of supermajority board voting requirements that must be met in order to make certain changes to the Agreement. These changes to the Agreement include classification of directors, procedures for electing and replacing directors, provisions related to loss allocation, and procedures and requirements for amending the Agreement. Furthermore, eighty percent of the entire board must vote to change GSCC's business.

GSCC proposes to remove these supermajority voting requirements with respect to future amendments of the Agreement. Many of the provisions affected by the supermajority voting requirements will be changed to such an extent that such requirements will no longer be logical. Furthermore, one of the overall goals of amending the Agreement is to make it more flexible.

Notwithstanding the above, GSCC would retain the requirement that it be authorized to change its business from that of a registered clearing agency including any change that would put GSCC in the business of being a broker or of performing brokered transactions, only upon an affirmative vote of at least eighty percent of the entire board. Moreover, for the protection of its shareholders and members, GSCC proposes that any change of business that puts GSCC in competition with clearing agent banks also be subject to a veto by a unanimous vote of all the clearing agent bank directors and one other participant director.

According to GSCC, the proposed rule change will benefit GSCC's members by allowing a more flexible, efficient, and responsive administration. Therefore, GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations promulgated thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–97–

07 and should be submitted by October 14, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25028 Filed 9–19–97; 8:45 am]

BILLING CODE 8010–01–M

SECUTITIES AND EXCHANGE COMMISSION

[Release No. 34–39083; File No. SR–NASD–97–54]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Computer-to-Computer Interface Circuit Fees for Non-NASD Members

September 16, 1997.

On July 28, 1997, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder[2] to amend Rule 7010 of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to charge Computer-to-Computer Interface (''CTCI'') subscribers that are not NASD members a circuit fee of $200 per month for each circuit. Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release and by publication in the **Federal Register**.[3] No comment letters were received. The Commission is approving the proposed rule change.

I. Description of Rule Change

Nasdaq proposed the rule change in order to charge CTCI subscribers that are not NASD members a circuit fee of $200 per month for each circuit. Firms employ CTCI between their in-house computer systems and Nasdaq for a variety of functions, the most prevalent being order entry into the Small Order Execution System (''SOES'') and the reporting of transactions into the Automated Confirmation Transaction Service (''ACT''). Nasdaq currently supports a total of 449 circuits.

Although most users of CTCI are NASD members, a small number are not. Specifically, these are mutual funds or their pricing agents that may use CTCI for transmitting net asset values (''NAVs'') each day to Nasdaq's Mutual Fund Quotation Service. To ensure that the costs are uniformly allocated among all CTCI subscribers, Nasdaq is proposing to apply the circuit charge to these subscribers as well.

The CTCI network is presently managed by MCI Communications Corp., which is responsible for customer services including installation, relocation and trouble shooting. Subscribers pay a monthly fee to MCI for each circuit in use. Nasdaq does not currently charge CTCI subscribers beyond the fees associated with the transaction services supported by the CTCI network.

Nasdaq believes that the new fee structure is necessary due to adjustments and enhancements that Nasdaq has already made to support capacity for trading days of 1 billion shares currently, 1.5 billion shares by the end of 1997, and 2 billion shares in 1998. As the number of CTCI circuits grows, the potential to exceed capacity limits in the CTCI supported services, notably ACT and SOES, likewise increases. As a consequence, additional infrastructure enhancements will be required to maintain the level of support required to run these services at an acceptable level of performance. In addition to future systems enhancements, Nasdaq continues to incur costs for the support of CTCI circuits and subscribers. These costs include hardware and software enhancements and upgrades for the communications interfaces with Nasdaq systems, support of the subscriber database, customer telephone support and Nasdaq staff planning and provisioning for CTCI. A recent activity-based costing analysis indicated that these costs total approximately $1.1 million annually, which Nasdaq seeks to recover through this fee.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Exchange Act,[4] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

II. Discussion

The Commission finds the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A(b)(5) of the Exchange Act.[5] Section 15A(b)(5) requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission believes that the CTCI fee for non-members is reasonable and results in an equitable allocation of the costs between NASD members and non-members associated with operating CTCI. The proposed rule change will merely act to offset Nasdaq's costs of doing so. Further, it is important that Nasdaq continue to increase its capacity and that it continue its infrastructure enhancements. Improvements such as these, which strengthen the national market system, are in the public interest. Accordingly, the Commission finds that Nasdaq's proposal is appropriate and consistent with the Exchange Act.

III. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASD–97–54) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25082 Filed 9–19–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39080; International Series Release No. 1100; File No. SR–ODD–97–1]

Self-Regulatory Organizations; OMLX, The London Securities and Derivatives Exchange Limited; Order Approving Proposed Options Disclosure Document, as Amended

September 15, 1997.

On June 30, 1997, OMLX, The London Securities and Derivatives Exchange

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38925 (August 12, 1997), 62 FR 44158 (August 19, 1997). Concurrently, pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act, Nasdaq filed with the Commission an identical rule change that applies to NASD members. *See* Securities Exchange Act Release No. 38926 (August 12, 1997), 62 FR 44157 (August 19, 1997).

[4] 15 U.S.C. 78*o*-3.

[5] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

Limited submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act''),[1] five preliminary copies of its options disclosure document (''ODD''), which describes the risks and characteristics of OMLX exchange-traded put and call options available to American investors.

On August 15, the OMLX exchange submitted an amendment to the ODD providing that the National Association of Securities Dealers, Inc. (the ''NASD''), will not serve as a U.S. custodian of OMLX's Rulebook, ODD, and registration statement, which includes a prospectus.[2]

Rule 9b–1 provides that an options market must file five preliminary copies of an ODD with the Commission at least 60 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the protection of investors. In addition, Rule 9b–1 requires an options market to file five copies of an amendment to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the protection of investors. The Commission has reviewed the OMLX exchange's ODD, as amended, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the disclosure document as of the date of this order.[3]

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[4] that the proposed OMLX ODD, as amended, is approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

by Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25026 Filed 9–19–97 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 240.9b–1.

[2] These documents will be available by request to OMLX, The London Securities and Derivatives Exchange, Limited, 107 Cannon Street, London EC4N 5AD, or by accessing OMLX's Internet address at: http:\\omgroup.com\.

[3] Rule 9b–1 provides that the use of an ODD shall not be permitted unless the options class to which the document relates is the subject of an effective registration statement on Form S–20 under the Securities Act of 1933. On September 12, 1997, the Commission, pursuant to delegated authority, declared effective, OMLX's Form S–20 registration statement. *See* File No. 333–34519.

[4] 17 CFR 240.9b–1.

[5] 17 CFR 200.30–3(a)(39).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 6]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action and consideration of new tasks to be proposed by FRA.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4:00 p.m. on Tuesday, September 30, 1997.

ADDRESSES: The meeting of the RSAC will be held at the BWI Airport Marriott, 1743 West Nursery Road, Baltimore, Maryland. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, FRA, 400 7th Street, S.W. Washington, D.C. 20590, (202) 632–3330, Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202) 632–3309, or Lisa Levine, Office of Chief Counsel, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202) 632–3189.

SUPPLEMENTARY INFORMATION:. Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4:00 p.m. on Tuesday, September 30, 1997. The meeting will be held at the BWI Airport Marriott, 1743 West Nursery Road, Baltimore, Maryland. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 27 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. Staff of the National Transportation Safety Board also participates in an advisory capacity.

During this meeting, the RSAC will receive status reports, containing progress information, regarding the proposed revision of the Track Safety Standards (including recently published NPRM on revisions to the track safety standards contained in 49 CFR part 213 and related issues) and the Notice of Proposed Rulemaking on Railroad Communications (including revisions to 49 CFR part 220).

The Committee will be briefed on, and may be asked to consider for approval, the Tourist and Historic Railroad working group's proposal for the revision of the steam locomotive inspection and testing standards contained in 49 CFR part 230.

The RSAC will also be receiving status reports, containing progress information, concerning three recently constituted elements of the Committee: the Locomotive Crashworthiness Working Group, the Locomotive Cab Working Conditions Working Group, and the Event Recorder Working Group (established to develop locomotive event recorder accident survivability standards and other amendments).

Finally, the agency will present four new tasks to the Committee for its acceptance: (1) review of the definition of events required to be reported as ''train accident'' under the Accident/Incident Reporting regulations; (2) development of performance standards for communications- and processor-based signal and train control systems; (3) evaluation of requirements for Positive Train Control (PTC), including costs and benefits of PTC systems; and (4) revisions to the regulations addressing freight cars safety standards, specifically with respect to applicability to freight cars used for maintenance of way purposes.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 F.R. 9740) for more information about the RSAC.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 97–25112 Filed 9–17–97; 3:15 pm]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33455]

Paducah & Louisville Railway—Trackage Rights Exemption—Western Kentucky Railway, LLC

Western Kentucky Railway, LLC (WKR), a Class III rail carrier, has agreed to grant overhead trackage rights to Paducah & Louisville Railway (P&L), a Class II rail carrier, over a segment of track between the CSX Transportation, Inc. (CSXT), and WKR connection at Providence, KY, at or near CSXT milepost 291.8 and WKR milepost 9.4 of the Wheatcroft-Providence section and Pyro Mine, KY, at or near WKR milepost 4 of the Blackford-Clay Section, a distance of approximately 10 miles.

The purpose of the trackage rights is to allow P&L to provide a rail service alternative for coal traffic between the Pyro Mine, KY, and BRT Terminal at Jessup, KY.

As a condition to this exemption, any employees affected by the trackage rights will be protected as required by 49 U.S.C. 11326(b), subject to the procedural interpretations of the analogous statutory provisions at 49 U.S.C. 10902 contained in the Board's decision in *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad Company,* STB Finance Docket No. 33116 (STB served Apr. 17, 1997) (*WCL Exemption*).[1]

The transaction was scheduled to be consummated on or after the September 11, 1997 effective date of the exemption.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33455, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William A. Mullins, Esq., Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, DC 20005–3314.

Decided: September 15, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25088 Filed 9–19–97; 8:45 am]

BILLING CODE 4915–00–P

[1] P&L has stated that it is alternatively willing to accept the conditions set out in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980). Section 11326(b) provides that parties may agree to terms other than as provided in that subsection.

[2] The notice to employees discussed in *WCL Exemption* and recently adopted as a requirement for certain transactions in *Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902—Advance Notice of Proposed Transactions,* STB Ex Parte No. 562 (STB served Sept. 9, 1997), does not apply to exempt trackage rights transactions.

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation, Board of Directors.

TIME AND DATE: 8:00 a.m., Wednesday, September 25, 1997.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial, operational and financial issues of the Corporation.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Arnold, 301–564–3354.

Dated: September 17, 1997.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 97–25191 Filed 9–18–97; 11:26 am]

BILLING CODE 8720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Rechartering

This gives notice under the Federal Advisory Committee Act, as amended Pub. L. 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on Cemeteries and Memorials has been rechartered for 2-year period beginning September 9, 1997, through September 9, 1999.

Dated: September 12, 1997.

By direction of the Secretary-Designate.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–25049 Filed 9–19–97; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Computer Matching Program Between the Department of Veterans Affairs and the Internal Revenue Service, Department of the Treasury

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer matching program.

Notice is hereby given that the Department of Veterans Affairs (VA) and the Internal Revenue Service (IRS) propose to conduct a computer matching program. The purpose of the program is to locate taxpayers who owe delinquent debts to the Federal Government as a result of their participation in benefit programs (including health care) administered by VA. Once located, VA will pursue collection of debts through voluntary payments. If such payments are not forthcoming, VA may seek involuntary collection under the provisions of the Debt Collection Act of 1982.

The legal authority for undertaking this matching program is contained in the Internal Revenue Code at 26 U.S.C. 6103(m)(2)(A). VA and IRS have concluded an agreement to conduct the matching program pursuant to provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)). IRS will act as recipient (i.e., matching) agency. VA will provide a tape extract to IRS that contains the Name Control (the first four characters of the surname) and social security number (SSN) of each record subject. IRS will compare the tape extract against its database of taxpayers who have filed Federal Individual Income Tax Returns, establishing ''hits'' (i.e., individuals common to both tapes) on the basis of matched SSN's and Name Controls. For each hit, IRS will disclose to VA the following information: Name Control, SSN, and latest street address, P.O. Box or other address furnished by the taxpayer.

Records to be Matched: The systems of records maintained by the respective agencies from which records will be disclosed for the purpose of this computer match are as follows:

IRS: Individual Master File (IMF), Treasury/IRS 24.030, containing millions of records of taxpayers who have filed Federal Individual Income Tax Returns. A full description of the system of records was last published at 60 FR 56787 (November 9, 1995).

VA: Accounts Receivable Records—VA (88VA20A6) containing records of approximately 350,000 debtors. Disclosure will be made under routine use No. 18 of that system, a full description of which was last published in 61 FR 60148 on November 26, 1996.

The matching program is expected to begin on or about October 22, 1997, and continue in effect for 18 months. The agreement governing the matching program and, thus, the matching program, may be extended an additional 12 months with the respective approval of VA's and the Department of the Treasury's Data Integrity Boards. Such extension must occur within three months prior to expiration of the 18-month period set forth above and under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to conduct the matching program to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420. All relevant material received before October 22, 1997, will be considered. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1158, 810 Vermont Avenue, NW., Washington, DC 20420, between 8 a.m. and 4:30 p.m., Monday through Fridays, except holidays.

FOR FURTHER INFORMATION CONTACT: Mark Gottsacker, Debt Management Center (389/00A), Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 725–1844.

SUPPLEMENTARY INFORMATION: This information is required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(e)(12)). A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: September 8, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–25048 Filed 9–19–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 62, No. 183

Monday, September 22, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1737

RIN 0572-AB32

Rural Telephone Bank and Telecommunications Program Loan Policies, Types of Loans, Loan Requirements

Correction

In rule document 97–23580 beginning on page 46867, in the issue of Friday, September 5, 1997, make the following correction:

On page 46871, in the third column, the Part 1737 heading should read:

PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Western Area Power Administration

Transmission and Ancillary Services Rates, Pick-Sloan Missouri Basin, Eastern Division

Correction

In notice document 97–24346 beginning on page 48272, in the issue of Monday, September 15, 1997, make the following correction:

On page 48272, in the second column, in the **DATES** section, in the fourth line, ''November 14, 1997'' should read ''December 15, 1997''.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[ET Docket No. 93-62; FCC 97-303]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

Correction

In rule document 97–24165 beginning on page 47960 in the issue of Friday, September 12, 1997, make the following correction:

§ 97.13 [Corrected]

On page 47968, in the second column, under the five asterisks, § 97.13(c)(1) was inadvertently omitted:

(c) Before causing or allowing an amateur station to transmit from any place where the operation of the station could cause human exposure to RF electromagnetic field levels in excess of those allowed under § 1.1310 of this chapter, the licensee is required to take certain actions.

(1) The licensee must perform the routine RF environmental evaluation prescribed by § 1.1307(b) of this chapter, if the transmitter PEP exceeds the following limits:

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AH46

Federal Employees Health Benefits Program: Opportunities To Enroll and Change Enrollment

Correction

In rule document 97–18958 beginning on page 38433, in the issue of Friday, July 18, 1997, make the following corrections:

1. On page 38434, in the second column, in the third line:

a. ''individuals'' should read ''individual''.

b. ''with'' should read ''within''

2. On the same page, in the same column, in the second complete paragraph, in the first line, ''comments'' should read ''commenters''.

§ 890.103 [Corrected]

3. On page 38435, in the second column, in § 890.103, in the paragraph designated as ''4.'', in the first line, ''received'' should read ''revised''.

§ 890.301 [Corrected]

4. On page 38435:

a. In the second column, in § 890.301(b), in the fourth line, ''pay'' should read ''day''.

b. In the third column, in § 890.301(c), in the third line from the bottom, ''employee'' should read ''employing''.

c. In the third column, in § 890.301(c), in the second line from the bottom, ''employment'' should read ''employee''.

5. On page 38436, in the third column, in § 890.301(1), this paragraph should be designated as ''(l)''.

§ 890.303 [Corrected]

6. On page 38437, in the first column:

a. In the heading of § 809.303, ''continuation'' should read ''Continuation''.

b. In § 809.303 paragraph designated ''8.'', in the third line, ''§ 890.301(1)'' should read ''§ 890.301(l)''.

§ 890.806 [Corrected]

7. On page 38441, in the second column, in § 890.806(1), this paragraph should be designated as ''(l)''.

BILLING CODE 1505-01-D

federal register

Monday
September 22, 1997

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 173

Hazardous Materials in Intrastate Commerce; Delay of Compliance Date, Technical Amendments, Corrections and Response to Petitions for Reconsideration; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket HM–200; Amdt. Nos. 171–154 and 173–262]

RIN 2137–AB37

Hazardous Materials in Intrastate Commerce; Delay of Compliance Date, Technical Amendments, Corrections and Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule, delay of compliance date, technical amendments, correction and response to petitions for reconsideration.

SUMMARY: On January 8, 1997, RSPA published a final rule which amended the Hazardous Materials Regulations (HMR) to expand the scope of the regulations to intrastate transportation of hazardous materials. The intended effect of the January 8, 1997 rule is to raise the level of safety in the transportation of hazardous materials by applying a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United States. In this final rule, RSPA is providing one additional year, until October 1, 1998, for compliance, responding to petitions for reconsideration and correcting errors in the January 8, 1997 final rule. The minor editorial changes made by this final rule will not impose any new requirements on persons subject to the HMR.

DATES: *Effective dates:* This final rule is effective October 1, 1997. The effective date for the final rule published under Docket HM–200 on January 8, 1997 (62 FR 1208) remains October 1, 1997.

Compliance dates: Voluntary compliance with the January 8, 1997 final rule has been authorized beginning April 8, 1997. Voluntary compliance with this final rule is authorized as of September 22, 1997.

Mandatory compliance with the HMR by intrastate motor carriers of hazardous materials is required beginning October 1, 1998, except that intrastate motor carriers of hazardous waste, hazardous substances, marine pollutants, and flammable cryogenic liquids in portable tanks and cargo tanks are already subject to the HMR.

FOR FURTHER INFORMATION CONTACT: Diane LaValle or Deborah Boothe, (202) 366–8553, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On January 8, 1997, RSPA issued a final rule under Docket HM–200 [62 FR 1208]. The final rule amended the HMR by expanding the scope of the regulations to intrastate transportation of hazardous materials in commerce. In the final rule, RSPA created or amended exceptions for agricultural operations (§ 173.5), materials of trade (§ 173.6), non-specification packagings used in intrastate transportation (§ 173.8) and minimum qualifications for registered inspectors (§ 180.409).

Since publication of the final rule, RSPA has discovered minor errors in § 173.6 (materials of trade) that are being corrected in this document. In response to a petition for reconsideration, RSPA is also amending § 173.6 to include provisions that materials of trade may include Division 2.2 materials in permanently installed cylinders or tanks built to the American Society of Mechanical Engineers (ASME) standards. RSPA is denying another part of this petition for reconsideration and two other petitions for reconsideration of the final rule.

To offset burdens that may fall on intrastate motor carriers and their shippers who were not previously subject to requirements comparable to those in the HMR because of State exceptions, RSPA is providing an additional year for compliance. RSPA is adding to § 171.1 the wording ‘‘except that until October 1, 1998, this subchapter applies to intrastate carriers by motor vehicle only in so far as this subchapter relates to hazardous waste, hazardous substances, flammable cryogenic liquids in portable tanks and cargo tanks, and marine pollutants.’’ This will ensure that the final rule will be printed in the 1997 edition of the Code of Federal Regulations while still providing additional time for compliance. It is important for people who choose to voluntarily comply to have up-to-date information on these requirements. However, RSPA concludes that an additional year is appropriate for these persons to learn and come into compliance with the requirements in the HMR.

In addition, the July 1, 1998 date set forth in §§ 173.5(a)(2) and 173.8(d)(3) as the deadline for States to enact legislation that authorizes exceptions for agricultural operations and non-specification cargo tanks is being changed to October 1, 1998, for consistency with the mandatory compliance date of the final rule. This will eliminate the potential problem of requiring compliance before a State has the opportunity to enact legislation to allow carriers in that state to take advantage of the exceptions.

II. Materials of Trade (§ 173.6)

RSPA is making several changes to § 173.6, as follows:

As provided by § 173.6, only certain hazardous materials are authorized the materials of trade exception. Although proposed in the March 20, 1996 supplemental notice of proposed rulemaking (SNPRM) [61 FR 11484], the final rule inadvertently omitted Division 5.2 (organic peroxide) materials from the list. Therefore, Division 5.2 materials are added to the list in § 173.6(a)(1) and are authorized under the materials of trade exception.

A reference to regulations of the Occupational Safety and Health Administration (OSHA) applicable to construction activities (29 CFR 1926.152) was inadvertently omitted in the requirements for packaging gasoline (§ 173.6(b)(4)). These OSHA requirements address storage and use of gasoline at construction sites and authorize up to one-gallon capacity plastic containers for gasoline. RSPA believes that the material of trade exception should also authorize these small plastic safety cans for the transportation of gasoline to avoid the transfer of gasoline from one container to another. Therefore § 173.6(b)(4) is revised to reference the OSHA standard in 29 CFR 1926.152(a)(1). Additionally the reference to 29 CFR 1910.106 is expanded to identify the specific paragraph that references the OSHA safety can standard.

The aggregate gross weight of all materials of trade on board a vehicle is limited by § 173.6(d). This paragraph erroneously refers to ‘‘permanently mounted tanks’’ authorized by paragraph (a)(1)(iii) of this section. Therefore, § 173.6(d)is revised to refer to ‘‘materials of trade authorized under paragraph (a)(1)(iii).’’

The last sentence in § 173.6(d) is placed in new paragraph (e) for clarity. New paragraph (e) clarifies that materials of trade may be transported on a motor vehicle with other hazardous materials and still be authorized exceptions.

Phillips Petroleum Company (Phillips) petitioned that the materials of trade exception be expanded to authorize transportation of Division 2.2 (non-flammable gas) materials in non-specification permanently mounted cylinders. Phillips stated that these cylinders for compressed air are constructed to the American Society of Mechanical Engineers (ASME) Pressure Vessel Code and are typically less than 70 gallons water capacity. Phillips further stated that since the air cylinders do not meet DOT specifications, they must be depressurized before they can be transported and then must be repressurized at the next job site before use.

RSPA agrees that the materials of trade exception may properly be expanded to include permanently installed tanks built to the ASME Pressure Vessel Code containing non-liquefied non-flammable compressed gases with no subsidiary hazard. This provision has been adopted into § 173.6(a)(1)(iv).

Phillips also petitioned RSPA to authorize the transportation, as materials of trade, of DOT exemption cylinders containing compressed or flammable gas samples. Several exemptions are in existence authorizing such transportation, and Phillips stated that these cylinders have been used for many years and have a proven track record of safety and reliability.

As provided in the final rule, § 173.6(b)(5) authorizes transportation of a cylinder or other pressure vessel containing a Division 2.1 or 2.2 material, conforming to the packaging, qualification, maintenance, and use requirements of this subchapter, as a material of trade. A cylinder manufactured under the terms of an exemption is an authorized packaging under the provisions of the subchapter. Therefore, no regulatory change is necessary to authorize such transportation and, accordingly, this part of Phillips's petition is denied.

III. Non-Specification Packagings Used in Intrastate Transportation (§ 173.8); Minimum Qualifications for Inspectors and Testers (§ 180.409)

National Tank Truck Carriers, Inc. (NTTC) petitioned RSPA to reconsider its authorization for continued use of non-specification cargo tanks by intrastate carriers transporting flammable liquid petroleum products. NTTC stated that the exceptions provided in the final rule for the continued use of these non-specification cargo tanks create a patchwork regulatory system that cannot be enforced and do not provide an ''equivalent'' level of safety. They also provided scenarios that, in NTTC's opinion, could create difficulties for enforcement and carrier personnel to determine compliance with the inspection and testing requirements of Part 180.

Two rebuttal letters were received in response to NTTC's petition for reconsideration. The Petroleum Marketers Association of America stated that States have traditionally been responsible for public safety and allowing the States to continue to exercise their rational judgement in packaging of certain hazardous materials in intrastate commerce does not endanger public safety. The Petroleum Transportation & Storage Association also opposed NTTC's petition and stated that NTTC completely misstates the effect HM–200 will have on the regulated community and public safety in general.

RSPA denies NTTC's petition. The situation described by NTTC regarding the unfair advantage given to intrastate motor carriers by allowing them to use non-specification cargo tanks is not new to the regulated industry. In fact, HM–200 will eventually lead to the elimination of non-specification cargo tanks and their replacement with DOT specification cargo tanks in the same manner the older MC 300 series cargo tanks are being removed from service, some of which are more than 25 years old.

The continuing use provision recognizes that a State may assume the responsibility on behalf of its citizens to allow the use of non-specification cargo tanks to transport liquid fuels in that State under specified conditions. In an effort to minimize the impact of a total replacement of the intrastate cargo tank fleet for small businesses in these States, RSPA decided to provide for the continued use of these non-specification cargo tanks. This provision applies only in those States that have or will provide a specific provision for their use by State law or regulation. No new non-specification cargo tanks used to transport flammable liquid petroleum products may be placed in service after October 1, 1998. In addition to any operational requirements placed on their use by the States in which they are operated, they are only authorized for continued operation in conformance with the inspection and test requirements of Part 180 after July 1, 2000. RSPA believes that the inspection and test requirements will provide an incremental safety increase in the operation of these cargo tanks.

RSPA denies NTTC's petition opposing the exception provided for registered inspectors. Educational requirements are waived for a person who only performs annual external visual inspections and leakage tests on cargo tank motor vehicles owned or operated by that person. These cargo tank motor vehicles must have a capacity of less than 3500 gallons and be used exclusively for transportation of flammable liquid petroleum fuels. The inspectors must register with DOT advising that they are performing inspections, thereby providing the Federal Highway Administration (FHWA) the identity and location of such inspection and testing facilities in order that they be included in FHWA's compliance program.

IV. Agricultural Operations (§ 173.5)

A petition bearing the names of 45 agricultural retailers and associations requested that RSPA revise § 173.5 ''to incorporate language that will provide an exception from the HMR for both farmers and retailers who transport agricultural products from retail-to-farm, between fields, and from the farm back to the local source of supply.'' These parties stated that RSPA had failed to provide adequate relief from the HMR's requirements ''for both farmers and retailers.'' (In a separate, letter, one of these agricultural organizations stated that: ''Arizona members stand firmly behind current safety regulations and have no reason to adopt exceptions in our state, however, we encourage our state counterparts to have the opportunity to respond to their local needs.'')

The petition asserted that farmers and retailers should not be forced to comply with the HMR for the ''few brief periods during the year'' that agricultural shipments take place: a 45-day period for planting crops and other periods in the fall when fertilizer is applied. Included with the petition was an estimate that it will cost each retail facility, assumed to handle 100 loads of agricultural products a day during the 45-day planting season, a total of $12,300 per year to determine whether the HMR apply (*i.e.*, whether the agricultural product is a hazardous material) and, for those that are covered, comply with the HMR's shipping paper and placarding requirements. According to these parties, HM–200 does not achieve the goal of uniformity because movements of agricultural products from retail-to-farm will be subject to the HMR, but movements of the same products between fields of the same farm are excepted.

On this basis, these petitioners appear to seek a broad exception from the HMR for any retailer or farmer that transports agricultural products ''from retail-to-field, between fields, and from the farm back to the local source of supply,'' that would be applicable throughout the United States, and not just in those few States that allow exceptions for movements of agricultural products.

The literal wording of the exception requested in this petition would apply to all hazardous materials transported by any retailer that made a single delivery of a hazardous material to a farmer. Under this interpretation, a company that delivers gasoline to a farm, for use in farm machinery, could claim that all its deliveries fit under the requested exception, even though other deliveries would be to businesses having no direct connection with agriculture.

In response to this petition, opposing comments were submitted jointly by the American Trucking Association, the Association of Waste Hazardous Materials Transporters, and NTTC. These organizations questioned whether agricultural retailers could or should be distinguished from other shippers and carriers of hazardous materials, stating that they did not believe agricultural retailers deserved ''special treatment.'' These organizations also referred to:

—The availability of educational materials to foster understanding of the HMR and compliance, furnished by RSPA and other industry organizations.

—The many crop protection products which are EPA-designated ''hazardous substances'' and, accordingly, have been subject to the HMR in intrastate shipments since 1980, so that many agricultural retailers should already be complying with the HMR in shipping or transporting these hazardous substances.

—The inclusion among the petitioners of retailers and organizations in many States that have already adopted the HMR as State law and have not provided broad exceptions for agricultural operations, implying that these petitioners seek to ''rollback'' existing regulations.

—Questions about whether the petitioners estimates of the costs of compliance are valid and actually: (1) apply in those States where the transportation of agricultural products is already subject to the HMR; (2) consider existing inventory and delivery systems; and (3) account for the information provided to the retailer when it receives a shipment of hazardous materials from its supplier.

—The absence of any condition or qualification (distance, type of road, public access, etc.) that might limit public exposure to risks involved in the transportation of hazardous agricultural products.

Both the petition for reconsideration and the responding comments are set forth in full at the end of this section (IV).

RSPA denies the petition for reconsideration because it believes that the broad exception requested would eliminate or preclude application of many of the basic requirements that are designed to promote a safe transportation system. Shipping papers, labels, placards, and identification number displays are the basic elements of a hazard communication system that is recognized throughout the United States and the world. The hazard communication system provides basic information to emergency responders so that they can better respond to hazardous materials incidents and protect themselves, the public, and the environment. The chemical and physical hazards presented by hazardous materials are the same whether being transported in interstate or intrastate commerce by an agricultural supplier. Hazardous materials, such as gasoline, which is an extremely flammable liquid, and anhydrous ammonia, which is poisonous when inhaled, are frequently transported in both interstate and intrastate commerce by agricultural retailers. Hazardous materials releases can occur regardless of whether a motor carrier is a common carrier or a private carrier, such as an agricultural retailer. During a recent hearing, a Senator reminded RSPA of an incident in which six people were killed and 76 hospitalized as a result of a release of agricultural grade anhydrous ammonia from cargo tank in Houston, Texas.

Lack of adequate hazard information at the site of an incident can result in inappropriate responses. In some cases, an emergency responder may not realize a hazardous material is involved and not take appropriate action. In other cases, unnecessary actions could be taken that result in significant disruptions to transportation corridors and unnecessary evacuations until sufficient information is obtained about the commodity being transported. RSPA believes that the safe transportation of hazardous materials cannot be achieved without a hazard communication system that provides the minimum information necessary to the carrier, enforcement personnel, and emergency responders when hazardous materials are involved in transportation incidents.

In adopting § 173.5, RSPA provided significant relief to farmers who transport hazardous materials. Taking into account the limited potential for high-exposure incidents, RSPA completely excepted from coverage of the HMR a farmer's transportation of an agricultural product (other than a Class 2 gas) over local roads between fields of the same farm, so long as the movement conforms to State requirements. RSPA also excepted a farmer from certain compliance requirements in the HMR involving training and emergency response (Part 172, Subparts G and H), when the farmer transports certain quantities of agricultural products to or from his or her farm, over distances up to 150 miles from the farm, if in conformance with State requirements. In the latter situation, RSPA did not provide exceptions from the HMR's other requirements, such as those for packaging, shipping papers, and placarding. Beyond a farmer's short trips between fields of a single farm over local roads, RSPA does not believe there is justification for waiving these fundamental requirements. Certain quantities of agricultural products that are hazardous materials remain eligible for the ''materials of trade'' exception in § 173.6, and non-specification packagings used by an intrastate carrier of agricultural products may also be authorized under the exception from the HMR's requirements in § 173.8.

Packaging requirements ensure that hazardous materials can survive normal transportation conditions, by assuring that the packaging material is compatible with its contents and that the container has been designed, constructed and closed in such a manner to prevent failure and an unintentional release of the hazardous material. Shipping papers, placards, and other forms of hazard communication are essential to provide emergency responders with the minimum information necessary to protect themselves, the public, and the environment, when an incident occurs during the transportation of hazardous materials. In the SNPRM, RSPA expressed its concern over ''the potential for the lack of uniform communication and miscommunication to emergency responders in any location where they may encounter hazardous materials incidents.'' Under the exception requested by the petitioners, vehicles transporting agricultural products that are hazardous materials would not be required to bear placards; an emergency responder would have to assume that any unplacarded vehicle contained hazardous materials if it had an in-State license plate, no matter where the vehicle was found within the State.

The petitioners represent many types of commercial businesses, of varying sizes, that routinely offer and transport hazardous materials. Many of them are already subject to the HMR. Five companies listed in the petition that are interstate carriers have combined gross sales of more than $11 billion per year and combined annual profits of more than $1 billion per year. All of the hazardous materials carried by any interstate carrier (not just those shipments between States) are already covered by the HMR. Other petitioners may operate within one of the many States that have adopted the HMR without exceptions for agricultural products, and the HMR requirements already apply to them. Still others transport agricultural products that are hazardous substances, such as anhydrous ammonia and many pesticides. That transportation has been subject to the HMR for 17 years, even within those States that have agricultural exceptions.

For these types of businesses, HM–200 does not impose new regulations, as the petition suggests. RSPA believes that Congress' intent, in mandating the extension of the HMR to all intrastate motor carriers, was to bring the remainder up to the same standard of safety, and not to eliminate the existing application of the HMR where it already exists. The latter would be the effect of the exception sought in the petition.

The petitioners' cost estimates appear overstated, if only for the fact that many retailers are already subject to the HMR, so that any marginal costs in evaluating shipments, adding necessary information to bills of lading (or other documentation that already exists), and applying placards would be minimal. It does not seem reasonable that retailers' employees would need an additional ten minutes, 100 times a day, throughout a 45-day period, to determine if the agricultural product being shipped is a hazardous material. As the opposing comment noted, all necessary information concerning an agricultural product, including whether it is hazardous, is already provided on documents that accompany the product, including shipping papers and material safety data sheets, when an agricultural retailer receives it from its supplier. In addition, packaged hazardous materials are marked with the shipping name and identification number of the hazardous materials and most display a hazard warning label. According to the requirements of the Occupational Safety and Health Administration, markings and labeling required by the HMR must remain on packages of hazardous materials until they have been emptied. Therefore, packages of hazardous materials in an agricultural retailer's storage area should already display the markings and labels required by the HMR.

A retailer should not have to apply new placards for each load of agricultural products subject to the HMR, as petitioners' cost estimates assume. Placards can easily be reused or permanently mounted on vehicles. The estimated cost of $1,575 per year for placards, for 25 loads per day, amounts to several times the cost of using permanently-mounted changeable metal placard sets on 25 separate vehicles (if that many separate vehicles were needed for the 25 loads per day assumed to require placarding), at approximately $120 per vehicle (4 sets per vehicle), when the cost of metal placards is amortized over their expected ten-year life.

In the normal course of their business activities, retailers routinely prepare documents in connection with sales and deliveries of their agricultural products, such as invoices, bills of lading, and delivery receipts, many of which are generated by computer. Even in those situations where a permanent ''laminated'' shipping paper may not be feasible, any of these existing documents can be used as the shipping paper required by the HMR. Once standard forms or computer programs are prepared, there should be little or no additional cost to include any additional information required by the HMR on these documents.

Even using the petitioners' estimates, which RSPA finds to be excessive, given the discussion above, the total annual projected cost of $12,300 for a retailer that handles 100 loads per day, over a 45-day period, works out to less than $2.75 per load. This appears to be a small fraction of the sales price of a load of agricultural products that may consist of thousands of pounds of fertilizer or pesticides. These minimal additional costs are outweighed by the benefits of applying the safety requirements of the HMR to those commercial motor vehicle operations.

All hazardous materials, including agricultural products, pose the same flammable, toxic, or explosive risks regardless of who is transporting them. Petitioners have not demonstrated that the factors underlying the exceptions in § 173.5 should apply to retailers, nor that the broad additional exceptions requested would be justified.

The petition for reconsideration of the agricultural exception in § 173.5 and the responding comment are set forth below:

February 7, 1997.

Mr. Alan I. Roberts,

Administrator, Research & Special Programs Administration, U.S. Department of Transportation 400 Seventh Street, S.W., Washington, D.C. 20590

Re: Petition for Reconsideration of Docket HM–200

Dear Mr. Roberts: As per 49 CFR 106.35, please accept this petition for reconsideration of HM–200 (62 Federal Register 1208), which in its present form will have a serious economic and operational impact on the agricultural industry in the United States.

Statement of Complaint

In the preamble of the HM–200 rule, RSPA acknowledges that it received ''more than 500 comments from farmers and agricultural supply businesses who expressed concern that this rule would prohibit states from granting exceptions for farmers.'' In the final rule, RSPA provided an exception from the HMR for farmers who transport agricultural products between fields of the same farm. We appreciate this action by RSPA, as it will provide some relief for farmers. However, we know that many of the 500 comments to RSPA also expressed concern about the impact of the rule on ag retailers as well. RSPA failed to acknowledge the concerns of the retail segment of the industry, whose operations have a direct impact on the farmer, and whose transport of materials is often identical to that of the farmer.

We are also aware that RSPA was directed in a conference report accompanying the FY 1997 DOT appropriations bill ''to give serious consideration to establishing an agriculture exception consistent with similar exemptions already granted by the department.''

Finally, Dr. D.K. Sharma received a ''Dear Colleague'' letter signed by 48 Congressmen and Senators that urged RSPA to ''carefully consider the concerns of the (ag) industry'' when formulating this rulemaking.

Despite all the directives to do so, after evaluating the language in the final HM–200 rule we are deeply disappointed that RSPA has failed to provide adequate relief from the HMR for both farmers and retailers. The minimal exceptions granted in Section 173.5 will do little to facilitate the efficient and historically safe movements of ag inputs from retail to farm, and will take a devastating economic toll on the agricultural industry.

Final Rule Unreasonable, Impractical

HM–200 effectively negates state exceptions for ag retailers and farmers from the HMR. In most cases, these exceptions have existed for decades. Because many farmers and ag businesses have never had to comply with the HMR, they are unaware of the implications of applying these federal rules to movements of agricultural products from retail-to-farm.

This rule is unreasonable and impractical from several standpoints.

1. The rule is effective October 1. Beginning next fall and extending into the spring, it will cause tremendous confusion for farmers, ag businesses and state officials who must now deal with a federal law that dictates the application of complicated hazardous materials regulations on local, rural shipments of agricultural inputs. On average, the bulk of agricultural product shipments occur during a 45-day period when planting commences, and periodically in the fall when some fertilizer is applied. Farmers and ag businesses do not transport agrichemicals every day of the year. Forcing them to comply with this complex regulation

for a few brief periods during the year is not justified and will only result in confusion and misunderstanding as each planting season rolls around—and we don't see it getting any easier as time goes on.

2. Although farmers received some relief from the HMR for between-field movements of DOT regulated agrichemicals, agricultural retailers were dealt a massive blow when RSPA completely ignored their similar need for relief when delivering these same products to the farm, or when the farmer himself picks up these products at the retail site and takes them to the farm.

Based on valid industry estimates, it will cost a typical agricultural retail facility $12,300 annually to comply with the mandates of HM–200. (See Attachment A for analysis of costs.) In the midwest alone, the number of ag retail facilities affected exceed 5,000 in number. At $12,300 per facility, that's a cost of $61,500,000 per year to comply with HM–200, and that's only in the midwest (i.e. Illinois, Indiana, Iowa, Wisconsin, Minnesota, Ohio). These are costs that will eventually be passed on in terms of higher costs of products and services to the farmer. The farmer, however, cannot pass along these costs due to the ag marketing structure. The added expense of complying with HM–200 will ultimately contribute to lower net farm income nationwide, without any significant increase in public safety.

3. Although the goal of HM–200 is uniformity, state officials in agricultural states will still be required to enforce the HMR only on certain types of agricultural movements, even though the movement of agricultural products—whether from retail-to-farm or between fields—will remain similar in their makeup. In essence, the same quantities and types of agricultural products will be on trucks leaving retail sites and on trucks traveling between fields.

We believe that for purposes of uniformity and enforcement, it makes more sense to allow exceptions from the HMR for both retail-to-farm and farm-to-farm shipments, whether the ag products are picked up by the farmer or delivered by the retailer. The excellent safety record of the ag industry merits this exception.

We believe HM–200 to be an unreasonable burden on the agricultural industry, impractical in terms of compliance and enforcement, and unnecessary based on the excellent safety record for retail-to-farm and farm-to-farm shipments of ag products. We stand behind our safety record and would welcome contradictory data from RSPA that proves that these movements of ag products pose an unreasonable threat to public safety.

We, the undersigned, petition RSPA to reconsider the impact that HM–200 will have on farmers and agricultural supply businesses. We urge RSPA to revise 49 CFR, Section 173.5 to incorporate language that will provide an exception from the HMR for both farmers and retailers who transport agricultural products from retail-to-farm, between fields, and from the farm back to the local source of supply.

We offer our knowledge and expertise to you in this endeavor, and would welcome the opportunity to sit down with RSPA and create a workable regulation—one that recognizes the unique needs of the agricultural industry, streamlines enforcement and provides a framework in which we can continue to safely and efficiently provide farmers with the tools they need to feed the U.S. and the world.

Sincerely,

Agribusiness Association of Iowa
Agricultural Retailers Association
Alabama Farmers Cooperative, Inc.
Alliance of State Agri-Business Assoc.
American Farm Bureau Federation
Arizona Crop Protection Association
CF Industries, Inc.
Countrymark Coop, Inc.
Farmland Industries, Inc.
Georgia Agribusiness Council
Gold Kist, Inc.
GROWMARK, Inc.
Illinois Farm Bureau
Illinois Fertilizer & Chemical Assoc.
Indiana Farm Bureau, Inc.
Indiana Plant Food & Ag Chemical Assoc.
Iowa Farm Bureau Federation
Iowa Institute for Cooperatives
Kansas Fertilizer & Chemical Association
Kansas Grain & Feed Association
Louisiana Ag Industries Association
Michigan Agribusiness Association
Minnesota Crop Production Retailers
Mo-Ag Industries Council
Montana Agricultural Business Association
National Association of Wheat Growers
National Cotton Council
National Council of Farmer Cooperatives
Nebraska Cooperative Council
Nebraska Fertilizer & Ag-Chemical Inst., Inc.
New England Council for Plant Protection
Ohio Agribusiness Association
Ohio Farm Bureau Federation
Oklahoma Fertilizer & Chemical Association
Rocky Mountain Plant Food & Ag Chem Asc.
SF Services, Inc.
South Dakota Farm Bureau
South Dakota Fertilizer & Ag Chemical Asc.
Southern States Cooperative
Tennessee Farmers Cooperative
The Andersons
United Suppliers, Inc.
WILFARM L.L.C.
Wisconsin Agri-Service Association, Inc.
Wyoming Agri-Business Association

Attachment A

Cost to Retail Ag Facilities to Comply with HM–200.

- Manpower: 10 additional minutes per load to evaluate shipments of agricultural products to determine applicability to the HMR.

On average, during spring season each agrichemical facility processes 100 loads per day of agricultural products (both packaged and in solution), which includes loads picked up by the farmer and loads delivered by the retailer.

100 loads per day × additional 10 minutes = 1000 minutes ÷ 60 min/hour = 16.666 additional manhours per day spent on compliance.

16.666 hours × $14 per hour average salary for personnel = $233.333 per day for additional manhours to evaluate loads for compliance.

$233.333 per day × 45 days of peak movement of agricultural products = $10,500 (rounded). This does not take into account movements made during off-season.

- Placards: Assume 25% of the 100 loads per day will require placarding. Most inexpensive placard is .35 cents. .35 × 4 = $1.40 per load. 25 loads per day × $1.40 = $35 per day. $35 × 45 days of spring season = $1575.
- Shipping Papers: It is highly unlikely that we can use ''laminated'' shipping papers as RSPA indicates in the preamble. Products, package sizes and shipping descriptions for ag products change too often to make pre-printed papers feasible. However, assuming we can generate some type of shipping paper at .05 cents per page, the costs are as follows: 100 loads per day × .05 for shipping paper = $5.00 × 45 days of spring season = 225. This does not take into account unknown cost for software and software maintenance to keep the descriptions up to date.

Minimum Annual Cost to Comply for AG Businesses to Comply With HM–200

$10,500	in manhours
1,575	in placards
225	in shipping papers (this cost likely to be substantially more)
$12,300	annually for each retail ag facility—with thousands of facilities in the U.S., the economic impact may be in the hundreds of millions of dollars.

Source: Data provided by management personnel at retail agribusiness facilities.

March 17, 1997.

Alan I. Roberts,

Associate Administrator, Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590

RE: HM–200

Dear Mr. Roberts: The undersigned associations representing carriers of hazardous materials are writing to express concern over the filing by the Agricultural Retailers Association (ARA), on behalf of a number of organizations with ties to the agri-business, of a petition for reconsideration RSPA's final rule in the matter of HM–200, hazardous materials in intrastate commerce. We realize that these comments are not timely filed. However, we beg the indulgence of RSPA as provided by 49 CFR 106.23 to consider late filed comments ''as far as practicable.''

For over a decade, carriers we represent have been required to follow RSPA's hazardous materials regulations (HMRs) when engaged in the intrastate commerce of hazardous substances, hazardous waste, flammable cryogenic liquids and, more recently, marine pollutants. Our members have benefitted by the consistent application of hazardous materials rules to all operations whether the transportation is intrastate, interstate or foreign. Our review of the ARA petition causes us to raise the following concerns:

- For Whom Is Relief Requested?

The petitioner states that HM–200 provided relief for farmers, but did not extend relief to ''ag retailers.'' In describing why HM–200 is ''unreasonable and impractical'', the petitioner repeatedly links the retail segment of the industry with farmers. However, no information is provided to support the linkage other than both, as an incidental part of their business, may use the same roads for transport. We find it hard to believe that the business operation of a typical ag retailer described in the petitioner's ''Attachment A'' comports with the typical business operation of a farmer.

Just as we see little similarity between an ag retailer and a farmer, it is not clear what circumstance(s) distinguishes the retailer from other shippers/carriers of hazardous materials that do not ship/haul agricultural-related hazardous materials. We understand that the agricultural supply industry is quite diverse as to the size of company involved and the scope of these company operations. Companies engaged in agri-business range from multi-national corporations to those that would be considered local small businesses. We note, however, that we would hardly qualify as ''small'' operations which, according to the petitioner, ship on average from each facility 100 hazardous materials loads a day. In any event, we have to assume that the petitioner would not want to create price competitive advantages for one segment of its industry over another. Consequently, the relief sought must be assumed to apply to all sizes and configurations of shipper/carriers.

Non-agricultural shippers/carriers of hazardous materials, no matter the size of the operation, have not been granted universal relief from the HMRs simply by virtue of how the consignees served by the shipper/carriers use the commodity transported. Since the HMRs are established to ''protect[] against the risks to life and property inherent in the transportation of hazardous material'' [49 U.S.C. 5101.], we fail to see how the petitioner has justified special treatment that will allow ag retailers to ignore these protective measures.

• What Is the Justification for the Relief Being Sought?

The petitioner claims that HM–200 is ''unreasonable and impractical'' for a number of reasons, and that the only appropriate response to these concerns is to ''provide an exception from the HMRs retailers who transport agricultural products from retail-to-farm, between field, and from the farm back to the local source of supply.'' Such a zero-sum proposal lacks credibility.

Based on the ag retailers' own justification for exception from the HMRs, we offer the following observations:

• Complexity of Rules: the rules may be ''new'', but ''complex'' is a relative term that deserves more analysis. For example, compared to rules issued under statutes administered by the U.S. Environmental Protection Agency (EPA), the HMRs are simple. Congress has granted DOT/RSPA authority to require nationally uniform and internationally harmonized rules. RSPA provides free, or at cost, numerous services and products to aid compliance. These services and products include a comprehensive advisory guidance document published in the **Federal Register** to remind persons involved in the transportation of hazardous materials of their regulatory responsibilities, newsletters, conferences, training modules, and the like. Those representing the ag retail industry could perform a great service to their membership by informing members of these resources.

• Hazardous Substances: Congress mandated that DOT regulate EPA-designated ''hazardous substances'' as ''hazardous materials.'' [42 U.S.C. 9656(a).] Hazardous substances have been regulated by RSPA in intrastate commerce since 1980. [49 CFR 171.1] Many crop protection products are regulated hazardous substances. In short, ag retailers should have been complying with the HMRs for the transport of these materials for the last 15 years. Any relief RSPA could grant from the HMRs will not change the fact that the materials are regulated by EPA.

In terms of any non-hazardous substance materials that are shipped/carried by ag retailers, the petitioner provides no information about the number, kind, and quantity of such materials now newly regulated by HM–200. Such information would be critical for RSPA to evaluate the merit of the level of relief requested.

• Scope of the Exception Requested: The HMRs apply nationally. Prior to HM–200, the federal government provided incentives to states to adopt the HMRs for intrastate commerce. According to data of the Federal Highway Administration, all but one state had adopted the HMRs and of those that adopted them only 8 provided exceptions specific to farmers and/or the broader agri-business community. In short, 41 states do not provide farm-specific exceptions from the HMRs. Yet, organizations that by their names represent agri-business in at least 18 states joined the ARA in support of this petition. Some organizations joining the petition appear to have nationwide representation. Is RSPA to infer that the petitioner wishes to rollback regulation that has already been implemented in 41 states?

• Costs: As noted above, agri-business has already been subject to the HMRs in the great majority of states. Any costs associated with the implementation of HM–200 should only reflect compliance costs that may ensue in the 9 states where some exceptions were granted to segments of the agri-business community. Also, some discount should be factored in for the proportion of the 100 shipments/day that are hazardous substances and have been subject to the HMRs even in those states that have not adopted these federal rules as a matter of state law.

Whatever is ultimately determined to be the proper scope in computing the cost basis, we question some of the cost estimates used by the petitioner in ''Attachment A.'' The petitioner states that ''[p]roducts, package sizes and shipping descriptions for ag products change * * * often * * *'' Obviously, to serve their customers, the ag retail industry has systems in place to track and fill orders for ag products in a rapidly changing environment. At the same time, we are unaware of commercial transactions involving the exchange of freight where some sort of shipping paper does not accompany the load for proof of delivery and/or billing purposes. Recognizing this fact, RSPA does not require a unique form to communicate the presence of hazardous materials in a load and to communicate appropriate emergency response information. [Shipments required by EPA to be tracked on the Uniform Manifest are the exception.] Additionally, we would assume that most deliveries to local ag retail facilities were transported in full compliance with the HMRs and that necessary shipping paper information could be readily transcribed from the papers accompanying these movements to the shipping papers necessary for further downstream distribution.

We specifically question the reliability of the estimate for placarding vehicles where the implication is given that placards are not reusable. Reusable configurations of placards can be purchased.

In short, we do not believe the economic analysis is accurate.

• Risk: The requested ''retail-to-farm and from the farm back to the local source of supply'' exception is subject to no qualification such as distance traveled, condition of the roads, access of the public, time-of-travel, or any other conditions that might limit the exposure of public to the excepted transportation events. We simply note that the roads used to support what would be movements subject to no official safety standards are public and shared by farmer and non-farmer alike. A public that, by law, RSPA must protect.

Conclusion

The petitioner references two congressionally-generated documents that request RSPA to carefully consider the concerns of the agriculture industry when issuing rules under HM–200. No evidence is provided that suggests RSPA did not fulfill this charge. To the contrary, we believe the attention drawn to this issue by agri-business ensured that RSPA not propose a rule that could not be supported on its merits. RSPA walked a careful balance between those in agri-business that advocated for exemption from the HMRs and those primarily in the emergency response community that opposed exceptions to safety rules.

RSPA provides many services to help the regulated community achieve compliance. We have no doubt that RSPA would make every effort to provide needed compliance services to ag retailers.

We appreciate the opportunity to submit these comments. Please contact us if additional input is necessary on any of the points raised above.

Sincerely,

Paul Bomgardner,

Hazardous Materials Specialist, American Trucking Associations, Inc.

Cynthia Hilton,

Executive Director, Association of Waste Hazardous Materials Transporters.

Cliff Harvison,

President, National Tank Truck Carriers, Inc.

This final rule delays for one year the mandatory compliance date for all requirements in the January 8, 1997, final rule under Docket HM–200 that otherwise would become mandatory on October 1, 1997. Because of the relief provided by this final rule, it is effective October 1, 1997, without the customary 30-day delay following publication.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Polices and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. This final rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) due to significant public and congressional interest. A regulatory evaluation was prepared for the January 8, 1997 final rule and is available for review in the Docket. The regulatory evaluation was reviewed and determined not to require updating. The effect of this final rule will delay for one year the costs and benefits of applying the HMR to intrastate motor carriers. There is no delay in the materials of trade exception and its benefits.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This rule concerns the packaging, marking, labeling, placarding and description of hazardous materials on shipping papers. This rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA determined that the effective date of Federal preemption for the requirements in this rule concerning covered subjects is January 1, 1998.

C. Regulatory Flexibility Act

The January 8, 1997 final rule affects many small business entities that ship or transport hazardous materials, however any adverse economic impact should be minimal. Many small entities affected by this final rule also receive relief from current regulatory requirements. The regulatory evaluation developed in support of the January 8, 1997 final rule includes a benefit-cost analysis that justifies its adoption, primarily due to the positive net benefits that may be realized by small entities under the materials of trade exception. RSPA has reviewed this regulatory evaluation and determined it was not necessary to update it. As noted earlier, RSPA is not delaying the materials of trade exception. This final rule, however, delays for one year the costs and benefits of applying the HMR to intrastate motor carriers.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Regulations Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR parts 171 and 173 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.1 [Amended]

2. In § 171.1 as revised at 62 FR 1215 effective October 1, 1997, paragraph (a)(1) is amended by removing the last period in the paragraph and adding at the end of the last sentence the wording '', (except that until October 1, 1998, this subchapter applies to intrastate carriers by motor vehicle only in so far as this subchapter relates to hazardous waste, hazardous substances, flammable cryogenic liquids in portable tanks and cargo tanks, and marine pollutants).''

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 173.5 [Amended]

4. In § 173.5 as revised at 62 FR 1215 effective October 1, 1997, paragraph (a)(2) is amended by revising the date ''July 1, 1998'' to read ''October 1, 1998''.

§ 173.6 [Amended]

5. In § 173.6 as added at 62 FR 1216 effective October 1, 1997, paragraphs (a)(1) introductory text, (a)(2), (b)(4), and (d) are revised; paragraph (a)(1)(iii) is amended by removing the semicolon and adding a period in its place; and a new paragraph (e) is added to read as follows:

§ 173.6 Materials of trade exceptions.

* * * * *

(a) * * *

(1) A Class 3, 8, 9, Division 4.1, 5.1, 5.2, 6.1, or ORM-D material contained in a packaging having a gross mass or capacity not over—

* * * * *

(2) A Division 2.1 or 2.2 material in a cylinder with a gross weight not over 100 kg (220 pounds), or a permanently mounted tank manufactured to ASME

standards of not more than 70 gallon water capacity for a non-liquefied Division 2.2 material with no subsidiary hazard.

* * * * *

(b) * * *

(4) For gasoline, a packaging must be made of metal or plastic and conform to the requirements of this subchapter or to the requirements of the Occupational Safety and Health Administration of the Department of Labor contained in 29 CFR 1910.106(d)(2) or 1926.152(a)(1).

* * * * *

(d) *Aggregate gross weight.* Except for a material of trade authorized by paragraph (a)(1)(iii) of this section, the aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).

(e) *Other exceptions.* A material of trade may be transported on a motor vehicle under the provisions of this section with other hazardous materials without affecting its eligibility for exceptions provided by this section.

§ 173.8 [Amended]

6. In § 173.8 as added at 62 FR 1216 effective October 1, 1997, paragraph (d)(3) is amended by revising the date ''July 1, 1998'' to read ''October 1, 1998''.

Issued in Washington, DC on September 16, 1997 under authority delegated in 49 CFR, part 1.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–25065 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–60–P

federal register

Monday
September 22, 1997

Part III

Department of Transportation

Aviation Proceedings, Agreements Filed During the Week Ending September 12, 1997; Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 12, 1997; Notices

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending September 12, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2889.

Date Filed: September 10, 1997.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 889; Reduce fares from India; Intended effective date: October 1, 1997.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–25109 Filed 9–19–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 12, 1997

The following Applications for Certificate of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2892.

Date Filed: September 11, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 9, 1997.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. 41102 and 41108, and Subpart Q of the Regulations, applies for a new or amended Certificate of Public Convenience and Necessity authorizing Delta to provide scheduled foreign air transportation of persons, property and mail between a point or points in the United States and a point or points in the Cayman Islands. Delta further requests route integration authority to permit Delta to combine services that will be operated pursuant to the grant of this application with all other Delta services authorized by existing certificates and exemptions granted by the Department, to the extent permitted by applicable international agreements.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–25108 Filed 9–19–97; 8:45 am]

BILLING CODE 4910–62–P

federal register

Monday
September 22, 1997

Part IV

Department of Housing and Urban Development

24 CFR Part 971

Assessment of the Reasonable Revitalization Potential of Certain Public Housing Required by Law; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 971

[Docket No. FR–4120–I–09]

RIN 2577–AB79

Assessment of the Reasonable Revitalization Potential of Certain Public Housing Required by Law

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: On September 26, 1996, HUD published a notice implementing section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Section 202 requires PHAs to identify certain distressed public housing developments that cost more than Section 8 rental assistance and cannot be reasonably revitalized. Households in occupancy that will be affected by the activities will be offered tenant-based or project-based assistance (that can include other public housing units) and will be relocated, to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory. The September 26, 1996 notice invited public comments. This interim rule takes into consideration the comments received on the September 26, 1996 notice and codifies the modified requirements in a new part 971.

DATES: Effective date: October 22, 1997.

Comment due date: November 21, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Senior Director for Policy and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (voice): (202) 708–0713 (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0210. 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.

II. The September 26, 1996 Federal Register Notice

On September 26, 1996, the Department published at 61 FR 50632, a notice to implement section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996) (''OCRA''). Section 202 requires PHAs to identify certain distressed public housing developments that cost more than Section 8 rental assistance and cannot be reasonably revitalized. Households in occupancy that will be affected by the activities will be offered tenant-based or project-based assistance (that can include other public housing units) and will be relocated, to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory.

As mandated by section 202, this requirement covers developments that (1) are on the same or contiguous sites, (2) contain more than 300 units, (3) have a vacancy rate of at least ten percent for units not in funded, on-schedule modernization programs, (4) cannot be revitalized through reasonable programs, and (5) are more expensive than tenant-based assistance. These developments must be removed from the public housing inventory within five years. Plans to do so must be developed in consultation with affected public housing residents and the local government containing the public housing. The term ''developments,'' as used in the statute and in this rule, includes applicable portions of developments. Tenant-based assistance or relocation to other public or assisted housing (to the maximum extent practicable, of the tenant's choice) must be offered to public housing residents whose developments will be removed from the inventory.

As required by section 202, the September 26, 1996 notice established standards to permit implementation in fiscal year 1996.[1] The standards tracked section 202(a) of OCRA and became effective September 30, 1996. On December 26, 1996, at 61 FR 68048, the Department issued a notice which amended the time frames that the Department set in the September 26, 1996 notice for accomplishing the standards necessary for compliance with section 202. On March 24, 1997, at 62 FR 13894, and on July 2, 1997, at 62 FR 35828, the Department issued notices which further amended the time frames.

Section 202 is a continuing requirement. For FY 1997, the time frames were established by **Federal Register** notices referenced above. The Department is considering, as of FY 1998, requiring one submission to be due at the time of submission of the Comprehensive Grant Plan or as a part of the Comprehensive Grant Plan. Comments are invited on this consideration, as well as other aspects of the proposed timing and consultation process.

III. Summary of Changes to the September 26, 1996 Federal Register Notice

The interim rule makes the following changes to the provisions set out in the September 26, 1996 notice:

1. Appropriate resident participation and involvement is emphasized.

2. When determining whether a property is subject to the requirements,

[1] The standards set forth in the September 26, 1996 notice are organized to coincide with the following statutory provisions:

(A) Be on the same or contiguous sites.

(B) Total more than 300 dwelling units.

(C) Have a vacancy rate of at least ten percent for dwelling units not in funded, on-schedule modernization programs.

(D) Have an estimated cost of continued operation and modernization of the developments as public housing in excess of the cost of providing tenant-based assistance under section 8 of the United States Housing Act of 1937 for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development cost required for modernization).

(E) Be identified as distressed housing that the public housing agency cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of household income.

PHAs can now use vacancy data from either their last confirmed PHMAP certification, as reported on the Form HUD–51234 (Report on Occupancy), or more recent data which demonstrates improvement in occupancy rates.

3. The per occupied unit cost test for continuing to operate the current, partially occupied development is eliminated. Instead, the cost test used will be the cost of providing a development that is viable over the long term.

4. For definition of viability, the income mix standards are changed to emphasize a site's ability to attract and retain a reasonable mix of households with full-time workers.

5. Changes to the post-revitalization cost test include reduced accrual costs for a revitalized development to better reflect modernization costs and the amount of investment made in the property, and inclusion of certain demolition and relocation costs as a cost of Section 8 rental assistance. Though the requirement remains for most developments to amortize modernization over a 20 year period rather than over a thirty year period, PHAs may present a thirty year amortization when revitalization is equivalent to new construction. Revitalization will only be considered reasonable where its cost does not exceed the cost of Section 8 rental assistance. All sources of funds for the revitalization effort must be identified, and the funds must be on hand if the PHA proposes to revitalize the development.

6. Where the PHA will demolish all of the units in a development, or the portion thereof, that is subject to section 202, section 202 requirements will be satisfied once the demolition occurs and its standards will not be applied further to the PHA's use of the site.

IV. Discussion of Public Comments on the September 26, 1996 Federal Register Notice

The September 26, 1996 notice invited public comment, and five commenters responded. In general, the commenters expressed concern in several areas. First, the process followed to develop and publish the notice was questioned. Second, the need for tenant consultation at all stages was stressed. Third, various issues were raised regarding the cost tests, specifically whether both the pre- and post-revitalization cost tests adequately reflected true and accurate costs. Further, many comments considered the outcome of post-revitalization scenarios, including the reasonableness of the ''definition'' of long-term viability, and the availability of sufficient Section 8 rental assistance. Finally, several commenters questioned if the outcome meant fewer housing resources for those in need.

A summary of the comments, with HUD's responses, follows:

Administrative Process and Legal Requirements Comment: The September 26, 1996 notice is invalid because:

—The Administrative Procedures Act was ignored. There was not a proposed and final rulemaking (and no good cause exception) with submission to Congress and the Comptroller General. HUD has usurped the rulemaking process as described in Part 10 of 24 Code of Federal Regulations.

—The statutory authority for the program lapsed on October 1, 1996, and there has been no legal extension.

—The notice was published on September 26, 1996 with an effective date of September 30, 1996. This was not sufficient; there is a need for a proposed and a final rule.

—The legislative language indicates that the process for implementation (and not actual implementation) begin by September 30, 1996.

Response: The September 26, 1996 notice is valid for the following reasons:

—Advance notice and public comment were not required before issuance of the document because the document was a notice and not a rule. Section 202 of OCRA does not contain a provision that mandates rulemaking before implementation of this section. Furthermore, section 202 directs the Secretary to establish standards for implementation and guidelines for developing a conversion plan. The notice did not go beyond the provisions of the statute, but provided the standards and guidelines required by the statute. With respect to the latter, HUD solicited public comment from representatives of groups most affected. As stated in the published Notice, the comments were taken into consideration.

—Since the document was not a rule, it did not have to be submitted for Congressional review of final rules and did not have to comply with the 15-day pre-publication and 30-day delayed effective date requirements for rules under section 7(o) of the HUD Act.

—Section 202 mandates that the Secretary establish standards to permit implementation of this section in Fiscal Year 1996. The statute was passed on April 26, 1996, and it would have been unreasonable to expect full implementation, through proposed and final rulemaking, by September 30, 1996. HUD made every effort to publish these standards as soon as possible, after informal consultation with representative groups. Despite the tight deadline and the necessary review procedures (including review by OMB), HUD was able to publish the standards on September 26, 1996.

Tenant Consultation and Relocation

Comment: Tenant consultation is not addressed. There is a need for tenant consultation at all stages of the process, with detail provided on what is expected (in terms of tenant consultation) at each stage.

Response: The Department agrees that it is important to involve tenants at all stages of the assessment process, and the September 26, 1996 notice does discuss the statute's requirement for consultation with applicable public housing tenants of the affected developments.

On December 26, 1996, the Department published another notice (61 FR 68048), which clarifies that PHAS must provide, as an initial step, copies of their submissions for Standards A to C to the appropriate tenant councils and groups.

This interim rule further details, at § 971.9, the PHAs' requirements to consult with appropriate tenant groups when conducting a viability assessment and developing conversion plans.

Comment: The notice needs to further address tenant relocation, expand relocation requirements and reference the Uniform Relocation Act.

Response: The section entitled ''Plan for Removal of Units From Public Housing Inventories; Implementation'' in the September 26, 1996 notice includes a discussion of the relocation process, including alternatives, resources and the statutory requirement for consultation.

This interim rule cross-references to the regulatory provisions on displacement and relocation at 24 CFR 970.5 which include applicability of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655) and the implementing regulations at 49 CFR part 24.

Cost Test Issues

Comment: The formula creates inflated costs per public housing unit, while undercounting the costs of Section 8 rental assistance.

The formula unfairly favors Section 8 by comparing the cost of all public housing units to the cost of Section 8 for only tenants currently in occupancy, by failing to capture inflation, and by overstating accrual needs.

The calculation disadvantages public housing.

The calculation fails to capture the inherent value of a public housing development.

Demolition and relocation costs should be included on the Section 8 side of the calculation.

The calculation overly penalizes a substantially vacant development.

Response: Several changes have been made to the cost test as a result of these comments and the experiences of HUD and its consultants. With the changes, the interim rule provides a better comparison between the costs of a public housing unit versus the costs of Section 8 rental assistance.

The cost test in the notice for continuing to administer the current, partially occupied development typically required layers of assumptions to estimate costs and to express these costs per occupied unit. Moreover, while that test attempted to accurately include current costs per occupied unit, no public housing authority proposes to continue to administer a development for two decades in a partially occupied state. Thus, HUD has decided to drop the initial cost test and to rely on the cost test for a revitalized, fully occupied development.

The cost test for the revitalized development will require realistic estimates for physically upgrading and then maintaining a viable development. Although current operating costs of the development will no longer be required for an independent cost test, these current costs will be used as one of the standards to show that the projected operating costs of the revitalized development are plausible. In particular, the discussion of projected costs must justify any estimate of per unit costs of the revitalized development that are significantly lower than the current operating costs per occupied unit of the development (or an estimate of those costs).

The accrual number for the post-revitalization cost test is now determined by taking the Total Development Cost (TDC), multiplying it by a coefficient of .02, and dividing by 12. Commenters thought that higher levels of modernization at the start of an accrual cycle should lower the accrual costs for many years to come. HUD agrees. To reflect these views, the accrual model for the revitalization stage (now the only stage) will first deduct from the TDC half the per unit cost of modernization, before multiplying the coefficient of .02 (a fifty year cycle) and dividing by 12 to make a monthly estimate. Thus, if the modernization cost per unit equalled the TDC, the estimated accrual per month would be halved.

An amount for demolition, site preparation and relocation will now be included as a cost of Section 8 rental assistance. Commenters said that demolition of buildings on site is a cost that should be covered by the Section 8 alternative. HUD agrees. The interim rule takes into account basic demolition costs of units that would otherwise be occupied under a viability plan and treats them as a capital cost to be amortized on the Section 8 side. The per unit costs of basic demolition and relocation will be actual costs based on comparable experience, but can be no higher than 10 percent of the TDC of a two bedroom walkup in the area. This cap is higher than the typical cost of demolition sustained by buildings demolished in the Hope VI program.

Some commenters suggested that extensive revitalization of a development will extend its useful life as low income housing to well beyond the twenty years of a viability test. Although some developments with the right mix of site, initial construction, management, tenants, and neighborhood remain viable well past twenty years, such extended viability cannot be assumed—especially for developments with the vacancy problems of those on the 202 list. The expenditure of modernization funds will not necessarily ensure viability past twenty years. Rather than generally extending the amortization period from twenty to thirty years, and rather than stiffening the viability test from twenty to thirty years, the interim rule instead will use a thirty year period only when revitalization is equivalent to new construction. Even for developments with a twenty year amortization, the cost test will recognize the value of large-scale modernization by reducing the ongoing cost of accrual (See above).

A somewhat different view of value is that public housing merits an insurance value because it will always be there to serve low income residents, whereas private rental housing might become much less available. Insurance value, however, is not easily computed and a marked decline in the supply of private rental housing for low income households will be reflected in a higher Fair Market Rent (FMR) standard.

Post-Revitalization Scenarios

Comment: The definition of long-term viability is too stringent; not all covered developments need density reduction; the income-mix requirement is unrealistic.

The criteria for long-term viability are problematic. Additional field work needs to be done to determine more adequately what is viable in the long-term (e.g., what is reasonable in terms of income mix).

The definition of long-term viability is too vague.

HUD needs to clarify what is meant by ''substantially exceeds Section 8 cost test.''

The use of the Total Development Cost guidelines is inappropriate.

Response: The basic elements required for reasonable revitalization have been retained. Viability has been defined elsewhere as the achievement of structural/system soundness and full occupancy at reasonable cost (see 24 CFR 968.315(e)(4)); and a reasonable source of funding also is an obvious requirement. Experience has shown, in addition, that achievement of physical soundness and full occupancy is not always enough to achieve viability in the long term. Section 202's inclusion of ''density reduction'' and ''achievement of a broader range of household income'', as measures to be taken in pursuit of long-term viability, indicate Congress' understanding that excessive density and concentration of very-low-income households can be serious impediments to the viability of public housing.

A fundamental aspect of this standard is the definition of long-term viability. For this purpose, HUD will continue to consider twenty years (or at least 30 years when the investment is equivalent to new construction) to be ''long term''. Twenty years is in keeping with the expected life of modernization improvements, as reflected by the length of annual contributions contracts covering modernization grant awards. [See section 14(b)(2) of the United States Housing Act of 1937 as amended, 42 U.S.C. 1437 *et seq.*]

This interim rule, nevertheless, in some respects modifies the ''definition'' of long-term viability. First, density requirements are clarified. PHAs no longer need demonstrate reduced density to assure long-term viability, but must show that the density proposed in the revitalized site is appropriate for the property and the site.

Second, income mix requirements are loosened somewhat. Some commenters thought that requiring an income mix estimated as 25 percent of households over time having an income of 30 to 50% of the area median income was too rigorous as a threshold standard for viability. HUD agrees. The interim rule will moderate the standard, so that the revitalized development must be able to attract over time a significant mix of households with at least one full-time worker (for example, at least 20 percent with an income at least 30 percent of the area median). The presence of some income mix is essential to the long-term social viability of a family development and is cited in the statute, and pegging that mix to a significant presence of full-time workers with a range of modest incomes is a minimum way to have a mix.

After consideration of the comments and in light of the statute's purpose, the interim rule states that reasonable revitalization must be able to be carried out with currently available funds and for no more than the cost of Section 8 rental assistance.

Commenters indicated that use of Total Development Cost (TDC) guidelines as a measure on which to judge reasonable reconstruction costs is inappropriate. Though HUD is reviewing possible changes in the applicability of TDC to reconstruction costs on an expedited basis, PHAs must continue to use the TDC until such changes are finalized.

Comment: The time frames for response are not realistic, especially for the development of a revitalization plan.

Response: The time frames for submission have been modified accordingly and the new time frames were published in notices in the **Federal Register** on December 26, 1996, March 24, 1997, and July 2, 1997. The July 2, 1997 notice extended the deadlines for submissions to HUD field offices as follows:

Accomplish Standards A to C by January 31, 1997 (was December 29, 1996)

Accomplish Standard D and E thirty (30) days after the effective date of the interim rule (was June 30, 1997)

Submit conversion plan ninety (90) days after accomplishing Standards D and E (was September 26, 1997)

PHAs now have more time to comply with all of the requirements of Section 202, and to develop a plan to either remove units from the public housing inventory or revitalize the development. Additional time will be provided to PHAs to modify plans or submissions if needed to comply with this interim rule.

Comment: The rule should stress the need for all plans to be consistent with the Consolidated Plan.

Response: As required by the statute, the interim rule will reiterate that any conversion plan must be approved by the local officials as not inconsistent with the Consolidated Plan.

Comment: HUD needs to indicate how a PHA can appeal if it disagrees with the HUD contractor.

Response: As stated in the September 26, 1996 notice, for sites where HUD has contracted with consultants for assessments, PHA responsibilities under this section are independent of any activities of the consultants. PHAs are responsible for submitting documentation in accordance with the requirements, but may use the consultants' assessments if they choose. Even where the PHA agrees with the consultant's findings, HUD reserves the right to make its own assessment of the evidence. In cases where a PHA disagrees with the consultant's findings and recommendations, the PHA's independent submission will serve as an initial indicator of disagreement. HUD will follow up in such situations accordingly, and may require additional documentation from the PHA or the consultant.

Potential Loss of Low Income Housing Resources

Comment: There needs to be a Section 8 rental assistance allocation to offset the loss of hard units.

There are not sufficient Section 8 resources available to meet the demand.

A commitment for replacement units is necessary before PHAs proceed.

Response: HUD has awarded several thousand section 8 rental certificates and vouchers in fiscal years 1995 and 1996 for relocation housing or replacement of developments covered by this interim rule. The fiscal year 1997 appropriation of Section 8 rental assistance that can be used for section 202 purposes appears sufficient. HUD has requested that Congress appropriate a sufficient number of Section 8 certificates and vouchers for this purpose in fiscal year 1998.

Comment: The rule does not adequately consider the needs of the current residents, or those on the waiting list.

The rule places a burden on the Section 8 rental market, which will be a problem for certain communities.

The rule fails to adequately consider the need for hard units in certain communities.

There is a need for additional project-based housing in some communities.

This ''one size fits all'' solution is not applicable to all cases.

Response: The law and the interim rule allow for implementation of a conversion plan over a period of up to five years, to provide some flexibility to adapt to local situations.

This Interim Rule

This interim rule takes into consideration the comments received on the September 26, 1996 notice and codifies the modified requirements, as discussed above, in a new part 971. This interim rule also provides for establishment of the time frames for compliance with section 202 by publication of a notice annually in the **Federal Register**.

Justification for Interim Rule

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

This interim rule provides further information on provisions that are already in effect, and modifies several of the requirements in accordance with public comments received on the September 26, 1996 **Federal Register** notice. It is important that these changes be applicable to those PHAs subject to section 202 in fiscal year 1997.

In the interest of obtaining the fullest participation possible in determining the proper means of administering the section 202 provisions, and in addition to the comment process that occurred with respect to the Notice, the Department invites public comment on the interim rule. The comments received within the 60-day comment period will be considered during development of a final rule that ultimately will supersede this interim rule.

Findings and Certifications

Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled ''Address.''

Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule do not have significant impact on States or their political subdivisions since the provisions of this interim rule apply to only a small percentage of PHAs that have developments with more than 300 units and adjusted vacancy rates of ten percent or more.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule will not have a significant impact on a substantial number of small entities, because the provisions of this interim rule apply to only a small percentage of PHAs that have developments with more than 300 units and adjusted vacancy rates of ten percent or more.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the programs affected by this interim rule is 14.855.

List of Subjects in 24 CFR Part 971

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended to add a new part 971 to read as follows:

PART 971—ASSESSMENT OF THE REASONABLE REVITALIZATION POTENTIAL OF CERTAIN PUBLIC HOUSING REQUIRED BY LAW

Sec.

Authority: Pub. L. 104–134; 42 U.S.C. 3535(d).

§ 971.1 Purpose.

Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub.L. 104–134, approved April 26, 1996) (''OCRA'') requires PHAs to identify certain distressed public housing developments that cost more than Section 8 rental assistance and cannot be reasonably revitalized. Households in occupancy that will be affected by the activities will be offered tenant-based or project-based assistance (that can include other public housing units) and will be relocated, to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory.

§ 971.3 Standards for identifying developments.

(a) PHAs shall use the following standards for identifying developments or portions thereof which are subject to section 202's requirement that PHAs develop and carry out plans for the removal over time from the public housing inventory. These standards track section 202(a) of OCRA. The development, or portions thereof, must:

(1) *Be on the same or contiguous sites.* (OCRA Sec. 202(a)(1)). This standard and the standard set forth in paragraph (a)(2) of this section refer to the actual number and location of units, irrespective of HUD development project numbers.

(2) *Total more than 300 dwelling units.* (OCRA Sec. 202(a)(2)).

(3) *Have a vacancy rate of at least ten percent for dwelling units not in funded, on-schedule modernization.* (OCRA Sec. 202(a)(3)). For this determination, PHAs and HUD shall use the data the PHA relied upon for its last Public Housing Management Assessment Program (PHMAP) certification, as reported on the Form HUD–51234 (Report on Occupancy), or more recent data which demonstrates improvement in occupancy rates. Units in the following categories shall not be included in this calculation:

(i) Vacant units in an approved demolition or disposition program;

(ii) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law;

(iii) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted; and

(iv) Units that are occupied by employees of the PHA and units that are utilized for resident services.

(4) *Have an estimated cost of continued operation and modernization of the developments as public housing in excess of the cost of providing tenant-based assistance under section 8 of the United States Housing Act of 1937 for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development cost required for modernization).* (OCRA Sec. 202(a)(5)).

(i) For purposes of this determination, the costs used for public housing shall be those necessary to produce a revitalized development as described in the paragraph (a)(5) of this section.

(ii) These costs, including estimated operating costs, modernization costs and accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing.

(iii) That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

(iv) Both the method to be used and an example are included in the Appendix to this part.

(5) *Be identified as distressed housing that the PHA cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of household income.* (OCRA Sec. 202(a)(4)). [See § 971.5.]

(b) Properties meeting the standards set forth in paragraphs (a)(1) through (3) of this section will be assumed to be ''distressed'' unless the PHA can show that the property fails the standard set forth in paragraph (a)(3) of this section for reasons that are temporary in duration and are unlikely to recur.

(c) Where the PHA will demolish all of the units in a development, or the portion thereof, that is subject to section 202, section 202 requirements will be satisfied once the demolition occurs and its standards will not be applied further to the use of the site.

(d) PHAs will meet the test for assuring long-term viability of identified housing only if it is probable that, after reasonable investment, for at least twenty years (or at least 30 years for rehabilitation equivalent to new construction) the development can sustain structural/system soundness and full occupancy; will not be excessively densely configured relative to standards for similar (typically family) housing in the community; will not constitute an excessive concentration of very low-income families; and has no other site impairments which clearly should disqualify the site from continuation as public housing.

§ 971.5 Long-term viability.

(a) *Reasonable investment.* (1) Proposed revitalization costs for viability must be reasonable. Such costs must not exceed, and ordinarily would be substantially less than, 90 percent of HUD's total development cost limit for the units proposed to be revitalized (100 percent of the total development cost limit for any ''infill'' new construction subject to this regulation). The revitalization cost estimate used in the PHA's most recent comprehensive plan for modernization is to be used for this purpose, unless a PHA demonstrates or HUD determines that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs that are described in paragraph (a)(2) of this section.

(2) The overall projected cost of the revitalized development must not exceed the Section 8 cost under the method contained in the Appendix to this part, even if the cost of revitalization is a lower percentage of the TDC than the limits stated in paragraph (a)(1) of this section.

(3) The source of funding for such a revitalization program must be identified and already available. In addition to other resources already available to the PHA, a PHA may assume that future formula funds provided through the Comprehensive Grant Program are available for this purpose, provided that they are sufficient to permit completion of the revitalization within the statutory five year time frame. (Comprehensive plans must be amended accordingly.)

(b) *Density.* Density reduction measures would have to result in a public housing community with a density approaching that which prevails in the community for similar types of housing (typically family), or a lower density. If the development's density already meets this description, further reduction in density is not a requirement.

(c) *Income mix.* (1) Measures generally will be required to broaden the range of resident incomes to include over time a significant mix of households with at least one full-time worker (for example, at least 20 percent with an income at least 30 percent of median area income). Measures to achieve a broader range of household incomes must be realistic in view of the site's location. Evidence of such realism typically would include some mix of incomes of other households located in the same census tract or neighborhood, or unique advantages of the public housing site.

(2) For purposes of judging appropriateness of density reduction and broader range of income measures, overall size of the public housing site and its number of dwelling units will be considered. The concerns these measures would address generally are greater as the site's size and number of dwelling units increase.

§ 971.7 Plan for removal of units from public housing inventories.

(a) *Time frames.* Section 202 is a continuing requirement, and the Secretary will establish time frames for submission of necessary information annually through publication of a **Federal Register** notice.

(b) *Plan for removal.* With respect to any development that meets all of the standards listed, the PHA shall develop a plan for removal of the affected public housing units from the inventory. The plan should consider relocation alternatives for households in occupancy, including other public housing and Section 8 tenant-based assistance, and shall provide for relocation from the units as soon as possible. For planning purposes, PHAs shall assume that HUD will be able to provide in a timely fashion any necessary Section 8 rental assistance. The plan shall include:

(1) A listing of the public housing units to be removed from the inventory;

(2) The number of households to be relocated, by bedroom size;

(3) Identification and obligation status of any previously approved CIAP, modernization, or major reconstruction funds for the distressed development and PHA recommendations concerning transfer of these funds to Section 8 or alternative public housing uses;

(4) The relocation resources that will be necessary, including a request for any necessary Section 8 and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing;

(5) A schedule for relocation and removal of units from the public housing inventory;

(6) Provision for notifying families residing in the development, in a timely fashion, that the development shall be removed from the public housing inventory; informing such families that they will receive tenant-based or project-based assistance; providing any necessary counselling with respect to the relocation, including a request for any necessary counseling funds; and assuring that such families are relocated as necessary to other decent, safe, sanitary and affordable housing which is, to the maximum extent possible, housing of their choice;

(7) The displacement and relocation provisions set forth in 24 CFR 970.5.

(8) A record indicating compliance with the statute's requirements for consultation with applicable public housing tenants of the affected development and the unit of local government where the public housing is located, as set forth in § 971.9.

(c) Section 18 of the United States Housing Act of 1937 shall not apply to demolition of developments removed from PHA inventories under this section, but shall apply to any proposed dispositions of such developments or their sites. HUD's review of any such disposition application will take into account that the development has been required to be removed from the PHA's inventory.

(d) For purposes of determining operating subsidy eligibility under the Performance Funding System (PFS), the submitted plan will be considered the equivalent of a formal request to remove dwelling units from the PHA's inventory and ACC and approval (or acceptance). The PHA will receive written notification that the plan has been approved (or accepted). Units that are vacant or vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this chapter and also will be provided the phase-down of subsidy pursuant to § 990.114 of this chapter.

(Approved by the Office of Management and Budget under control number 2577–0210).

§ 971.9 Tenant and local government consultation.

(a) PHAs are required to proceed in consultation with affected public housing residents. PHAs must provide copies of their submissions complying with §§ 971.3(a) (1) through (3) to the appropriate tenant councils and resident groups before or immediately after these submissions are provided to HUD.

(b) PHAs must:

(1) Hold a meeting with the residents of the affected sites and explain the requirements of section 202 of OCRA;

(2) Provide an outline of the submission(s) complying with § 971.3(a) (4) and (5) to affected residents; and

(3) Provide a reasonable comment period for residents and must provide a summary of the resident comments to HUD.

(c) PHAs must prepare conversion plans in consultation with affected tenants and must:

(1) Hold a meeting with affected residents and provide draft copies of the plan; and

(2) Provide a reasonable comment period for residents and must provide a summary of the resident comments to HUD.

(d) The conversion plan must be approved by the local officials as not inconsistent with the Consolidated Plan.

§ 971.11 HOPE VI developments.

Developments with HOPE VI implementation grants that have approved HOPE VI revitalization plans will be treated as having shown the ability to achieve long-term viability with reasonable revitalization plans. Future HUD actions to approve or deny proposed HOPE VI implementation grant revitalization plans will be taken with consideration of the standards for section 202. Developments with HOPE VI planning or implementation grants, but without approved HOPE VI revitalization plans, are fully subject to section 202 standards and requirements.

§ 971.13 HUD enforcement authority.

Section 202 provides HUD authority to ensure that certain distressed developments are properly identified and removed from PHA inventories. Specifically, HUD may:

(a) Direct a PHA to cease additional spending in connection with a development which meets or is likely to meet the statutory criteria, except as necessary to ensure decent, safe and sanitary housing until an appropriate course of action is approved;

(b) Identify developments which fall within the statutory criteria where a PHA has failed to do so properly;

(c) Take appropriate actions to ensure the removal of developments from the inventory where the PHA has failed to adequately develop or implement a plan to do so; and

(d) Authorize or direct the transfer of capital funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects funds) to tenant-based assistance or appropriate site revitalization for the agency.

Appendix to Part 971: Methodology of Comparing Cost of Public Housing With Cost of Tenant-Based Assistance

I. Public Housing

The costs used for public housing shall be those necessary to produce a revitalized development as described in the next paragraph. These costs, including estimated operating costs, modernization costs and costs to address accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing. That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost. The estimated cost of the continued operation and modernization as public housing shall be calculated as the sum of total operating, modernization, and accrual costs, expressed on a monthly per occupied unit basis. The costs shall be expressed in current dollar terms for the period for which the most recent Section 8 costs are available.

A. Operating Costs

1. The proposed revitalization plan must indicate how unusually high current operating expenses (e.g, security, supportive services, maintenance, utilities) will be reduced as a result of post-revitalization changes in occupancy, density and building configuration, income mix and management. The plan must make a realistic projection of overall operating costs per occupied unit in the revitalized development, by relating those operating costs to the expected occupancy rate, tenant composition, physical configuration and management structure of the revitalized development. The projected costs should also address the comparable costs of buildings or developments whose siting, configuration, and tenant mix is similar to that of the revitalized public housing development.

2. The development's operating cost (including all overhead costs pro-rated to the development—including a Payment in Lieu of Taxes (PILOT) or some other comparable payment, and including utilities and utility allowances) shall be expressed as total operating costs per month, divided by the number of units occupied by households. For example, if a development will have 1,000 units occupied by households and will have $300,000 monthly in non-utility costs (including pro-rated overhead costs and appropriate P.I.L.O.T.) and $100,000 monthly in utility costs paid by the authority and $50,000 monthly in utility allowances that are deducted from tenant rental payments to the authority because tenants paid some utility bills directly to the utility company, then the development's monthly operating cost per occupied unit is $450—the sum of $300 per unit in non-utility costs, $100 per unit in direct utility costs, and $50 per unit in utility allowance costs.

3. In justifying the operating cost estimates as realistic, the plan should link the cost estimates to its assumptions about the level and rate of occupancy, the per-unit funding of modernization, any physical reconfiguration that will result from modernization, any planned changes in the surrounding neighborhood and security costs. The plan should also show whether developments or buildings in viable condition in similar neighborhoods have achieved the income mix and occupancy rate projected for the revitalized development. The plan should also show how the operating costs of the similar developments or buildings compare to the operating costs projected for the development.

4. In addition to presenting evidence that the operating costs of the revitalized development are plausible, when the per-unit operating cost of the renovated development is more than ten percent lower than the current per-unit operating cost of the development, then the plan should detail how the revitalized development will achieve its reduction in costs. To determine the extent to which projected operating costs are lower than current operating costs, the current per-unit operating costs of the development will be estimated as follows:

a. If the development has reliable operating costs and if the overall vacancy rate is less than twenty percent, then these costs will be divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all units not fully funded under PFS. For instance, if the total monthly operating costs of the current development are $6.6 million and it has 1,000 occupied units and 200 vacant units not fully funded under PFS (or a 17 percent overall vacancy rate), then the $6.6 million is divided by 1100—1000 plus 50 percent of 200—to give a per unit figure of $600 per unit month. By this example, the current costs of $600 per occupied unit are at least ten percent higher than the projected costs per occupied unit of $450 for the revitalized development, and the reduction in costs would have to be detailed.

b.If the development currently lacks reliable cost data or has a vacancy rate of twenty percent or higher, then its current per unit costs will be estimated as follows. First, the per unit cost of the entire authority will be computed, with total costs divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all vacant units not fully funded under PFS. Second, this amount will be multiplied by the ratio of the bedroom adjustment factor of the development to the bedroom adjustment factor of the Housing Authority. The bedroom adjustment factor, which is based on national rent averages for units grouped by the number of bedrooms and which has been used by HUD to adjust for costs of units when the number of bedrooms vary, assigns to each unit the following factors:.70 for 0-bedroom units, .85 for 1-bedroom units, 1.0 for 2-bedroom units, 1.25 for 3-bedroom units, 1.40 for 4-bedroom units, 1.61 for 5-bedroom units, and 1.82 for 6 or more bedroom units. The bedroom adjustment factor is the unit-weighted average of the distribution. For instance, if the development with one thousand occupied units had in occupancy 500 two-bedroom units and 500 three-bedroom units, then its bedroom adjustment factor would be 1.125—500 times 1.0 plus 500 times 1.25, the sum divided by 1,000. Where necessary, HUD field offices will arrange for assistance in the calculation of the bedroom adjustment factors of the Housing Authority and its affected developments.

c. As an example of estimating development operating costs from PHA operating costs, suppose that the Housing Authority had a total monthly operating cost per unit of $500 and a bedroom adjustment factor of .90, and suppose that the development had a bedroom adjustment factor of 1.125. Then, the development's estimated current monthly operating cost per occupied unit would be $625—or $500 times 1.25 (the ratio of 1.125 to .90).

B. Modernization

The cost of modernization is the initial revitalization cost to meet viability standards, that cost amortized over twenty years (which is equivalent to fifteen years at a three percent annual real capital cost for the initial outlay). Expressed in monthly terms, the modernization cost is divided by 180 (or 15 years times 12 months). Thus, if the initial modernization outlay to meet viability standards is $60 million for 1,000 units, then the per-unit outlay is $60,000 and the amortized modernization cost is $333 per unit per month (or $60,000 divided by 180). However, when revitalization would be equivalent to new construction and the PHA thus is permitted to amortize the proposed cost over thirty years (which is equivalent to twenty-two and one-half years at a three percent annual real capital cost to the initial outlay), the modernization cost will be divided by 270, the product of 22.5 and 12, to give a cost per unit month of $222.

C. Accrual

The monthly per occupied unit cost of accrual (i.e., replacement needs) will be estimated by using the latest published HUD unit total development cost limits for the area and applying them to the development's structure type and bedroom distribution after modernization, then subtracting from that figure half the per-unit cost of modernization, then multiplying that figure by .02 (representing a fifty year replacement cycle), and dividing this product by 12 to get a monthly cost. For example, if the development will remain a walkup structure containing five hundred two-bedroom occupied and five hundred three-bedroom occupied units, if HUD's Total Development Cost limit for the area is $70,000 for two-bedroom walkup structures and $92,000 for three-bedroom walkup structures, and if the per unit cost of modernization is $60,000, then the estimated monthly cost of accrual per occupied unit is $85. This is the result of multiplying the value of $51,000—the cost guideline value of $81,000 minus half the modernization value of $60,000—by .02 and then dividing by 12.

D. Overall Cost

The overall current cost for continuing the development as public housing is the sum of its monthly post-revitalization operating cost estimates, its monthly modernization cost per occupied unit, and its estimated monthly accrual cost per occupied unit. For example, if the operating cost per occupied unit month is $450 and the amortized modernization cost is $333 and the accrual cost is $85, the overall monthly cost per occupied unit is $868.

II. Tenant-Based Assistance

The estimated cost of providing tenant-based assistance under Section 8 for all households in occupancy shall be calculated as the unit-weighted averaging of the monthly Fair Market Rents for units of the applicable bedroom size; plus the administrative fee applicable to newly funded Section 8 rental assistance during the year used for calculating public housing operating costs (e.g., the administrative fee for units funded from 10/1/95 through 9/30/96 is based on column C of the January 24, 1995 **Federal Register**, at 60 FR 4764, and the administrative fee for units funded from 10/1/96 through 9/30/97 is based on column B of the March 12, 1997 **Federal Register**, at 62 FR 11526); plus the amortized cost of demolishing the occupied public housing units, where the cost per unit is not to exceed ten percent of the TDC prior to amortization. For example, if the development has five hundred occupied two-bedroom units and five hundred occupied three-bedroom units and if the Fair Market Rent in the area is $600 for two bedroom units and is $800 for three bedroom units and if the administrative fee comes to $46 per unit, and if the cost of demolishing 1000 occupied units is $5 million, then the per unit monthly cost of tenant based assistance is $774 ($700 for the unit-weighted average of Fair Market Rents, or 500 times $600 plus 500 times $800 with the sum divided by 1,000; plus $46 for the administrative fee; plus $28 for the amortized cost of demolition and tenant relocation (including any necessary counseling), or $5000 per unit divided by 180 in this example). This Section 8 cost would then be compared to the cost of revitalized public housing development—in the example of this section, the revitalized public housing cost of $868 monthly per occupied unit would exceed the Section 8 cost of $774 monthly per occupied unit by 12 percent. The PHA would have to prepare a conversion plan for the property.

III. Detailing the Section-8 Cost Comparison: A Summary Table

The Section 8 cost comparison methods are summarized, using the example provided in this section III.

A. Key Data, Development: The revitalized development has 1000 occupied units. All of the units are in walkup buildings. The 1000 occupied units will consist of 500 two-bedroom units and 500 three-bedroom units. The total current operating costs attributable to the development are $300,000 per month in non-utility costs, $100,000 in utility costs paid by the PHA, and $50,000 in utility allowance expenses for utilities paid directly by the tenants to the utility company. Also, the modernization cost for revitalization is $60,000,000, or $60,000 per occupied unit. This will provide standards for viability but not standards for new construction. The cost of demolition and relocation of the 1000 occupied units is $5 million, or $5000 per unit, based on recent experience.

B. Key Data, Area: The unit total development cost limit is $70,000 for two-bedroom walkups and $92,000 for three-bedroom walkups. The two-bedroom Fair Market Rent is $600 and the three-bedroom Fair Market Rent is $800. The applicable monthly administrative fee amount, in column B of the March 12, 1997 **Federal Register** Notice, at 62 FR 11526, is $46.

C. Preliminary Computation of the Per-Unit Average Total Development Cost of the Development: This results from applying the location's unit total development cost by structure type and number of bedrooms to the occupied units of the development. In this example, five hundred units are valued at $70,000 and five hundred units are valued at $92,000 and the unit-weighted average is $81,000.

D. Current Per Unit Monthly Occupied Costs of Public Housing:

1. Operating Cost—$450 (total monthly costs divided by occupied units: in this example, the sum of $300,000 and $100,000 and $50,000—divided by 1,000 units).

2. Amortized Modernization Cost—$333 ($60,000 per unit divided by 180 for standards less than those of new construction).

3. Estimated Accrual Cost—$85 (the per-unit average total development cost minus half of the modernization cost per unit, times .02 divided by 12 months: in this example, $51,000 times .02 and then divided by 12).

4. Total per unit public housing costs—$868.

E. Current per unit monthly occupied costs of section 8:

1. Unit-weighted Fair Market Rents—$700 (the unit-weighted average of the Fair Market Rents of occupied bedrooms: in this example, 500 times $600 plus 500 times $800, divided by 1000).

2. Administrative Fee—$46.

3. Amortized Demolition and Relocation Cost—$28 ($5000 per unit divided by 180).

4. Total per unit section 8 costs—$774.

F. Result: In this example, because revitalized public housing costs exceed current Section 8 costs, a conversion plan for the property would be required.

Dated: August 22, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

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federal register

Monday
September 22, 1997

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3190

Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; Cooperative Agreements; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3190

[WO–300–07–1310–00]

RIN 1004–AD09

Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; Cooperative Agreements

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is adopting these regulations to streamline and amend its cooperative agreement regulations. The rule will implement section 8(a) of the Federal Oil and Gas Royalty Simplification and Fairness Act that eliminates cooperative agreements on Federal lands and will implement a policy change for funding of cooperative inspection agreements on Indian lands.

DATES: Effective September 22, 1997.

ADDRESSES: Inquiries or suggestions should be sent to the attention of the Fluid Minerals Group at: Director (310), Bureau of Land Management, Rm. 501, LS, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ian Senio, Regulatory Analyst, at BLM's Regulatory Affairs Group at (202) 452–5049 or Sue Stephens, Program Analyst, at BLM's Native American Office at (505) 438–7553.

SUPPLEMENTARY INFORMATION:

Background

In 1987 and 1991, BLM promulgated regulations, found at 43 CFR Part 3190 (52 FR 27182) and 3192 (56 FR 2998), respectively, implementing section 202 of the Federal Oil and Gas Royalty Management Act of 1982, (30 U.S.C. 1732) (FOGRMA). Section 202 of FOGRMA provided for cooperative agreements with States and Tribes to share oil or gas royalty management information, and to carry out inspection, auditing, investigation or enforcement activities on Federal and Indian oil and gas leases. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (Pub. L. 104–185) (FOGRSFA), which in effect amended FOGRMA, eliminated cooperative agreements on Federal lands.

BLM has cooperative agreements with several Tribes for oil and gas inspection and enforcement activities on Tribal lands. Up to now, these agreements were funded at 50 percent of allowable costs. The Minerals Management Service (MMS) also entered into cooperative agreements with several Tribes for royalty accounting activities. Initially these MMS agreements were funded at 50 percent, but in 1991, MMS increased its funding for cooperative agreements to 100 percent.

This rule amends part 3190 by removing references to cooperative agreements on Federal lands and by increasing funding for cooperative agreements on Indian lands to up to 100 percent. This eliminates discrepancies in funding these types of agreements between bureaus within the Department of the Interior.

On April 9, 1997 (62 FR 17138) BLM published a proposed rule to streamline and amend its cooperative inspection agreement regulations found at 43 CFR part 3192. The purpose of the amendment was to implement Section 8(a) of FOGRSFA which eliminates cooperative agreements on Federal lands and to implement a policy change for funding of cooperative agreements on Indian lands. The 30-day comment period expired on May 9, 1997. The BLM received 4 comments on the proposed rule. Of the 4 comments, 2 were from Tribes and 2 were from government agencies. All of the comments were carefully considered in developing this final rule.

General Comments

The main purpose of the proposed regulations is to implement Section 8(a) of FOGRSFA and to increase funding for the BLM's cooperative inspection agreement program. Most commenters favored the increase in funding.

One commenter stated that the following sentence in the preamble of the proposed rule was confusing: ''States may still enter into a cooperative agreement on Tribal lands with the permission of the Tribe or affected allottee.'' The commenter's concern was that an allottee cannot give permission to the State regarding a cooperative agreement solely impacting Tribal lands. We agree. The sentence should have made reference to Indian lands, which includes allotted lands.

One commenter disagreed with the statement in the preamble that the increase in funding for cooperative agreements with Tribes is purely financial in nature because the Federal government has a fiduciary trust responsibility to protect Indian mineral resources. The statement that the regulatory change was purely financial in nature was intended to indicate that, for the purposes of the National Environmental Policy Act (NEPA), the implementation of this regulation would not have an effect on the environment and was not meant as a statement on BLM's trust responsibilities.

One commenter did not agree that under the Regulatory Flexibility Act the regulatory changes proposed would ''not unnecessarily or disproportionately burden small entities'' since Tribal governments may be considered small entities. This commenter also thought it was unclear whether significant impacts affecting the ''public at large'' pertain to entire state(s) or reservations. The Regulatory Flexibility Act requires an analysis if a rule has significant economic impact on a substantial number of small entities. In this case, the total anticipated effect of the regulations is $250,000 annually. This is not considered to be a significant effect on a substantial number of small entities since the number of Tribes currently participating in the cooperative agreement program is small (5), and individual increases only range from $8,000 to $55,000. This funding will have an insignificant impact on the overall budgets of these Tribes with producing oil and gas leases.

One commenter stated that the protection of Indian mineral resources is a fiduciary responsibility of the Federal government and that the requirement for Tribes to pay 50% of the costs is a breach of fiduciary responsibility. The commenter requested retroactive application of the proposed increase to 100% funding, and reimbursement of the 50% matching funds expended by the Tribes during that period. The Federal Government met its trust responsibility by insuring that Indian oil and gas leases were inspected to the standards of FOGRMA. The BLM expended no less on these functions when they were undertaken by Tribes than it did when it performed them directly and continued to take an active oversight role to assure the trust responsibility was met.

Nor did BLM compel any Tribe to undertake these functions. By agreeing to match the Federal funding, the participating Tribes gave their mineral-owning members a higher level of service than required by the trust responsibility. Neither the trust responsibility, nor FOGRMA, requires BLM to fund 100% of reasonable Tribal costs under a cooperative agreement, but BLM is now willing to do so.

One commenter stated that funding to support Tribal cooperative agreements should be appropriated under a separate allocation in BLM's budget. The commenter believed that otherwise it may be a low priority. The method BLM uses to allocate its funds is beyond the scope of this regulation and is not addressed in the final rule, however, BLM's internal budget directives require that cooperative agreements be funded.

One commenter said that eliminating the applicability of Section 202 of FOGRMA to Federal lands is not necessary. We disagree. The elimination of cooperative agreements on Federal lands is required by section 8(a) of FOGRSFA. BLM can not undo by regulation what Congress has done by statute. BLM did not adopt this comment.

Specific Comments

Section 3192.1 describes cooperative agreements and when BLM will enter into a cooperative agreement. BLM will enter into cooperative agreements with Tribes or States to conduct inspection, investigation or enforcement activities on producing Indian oil and gas leases. BLM will enter into a cooperative agreement with a State to inspect oil and gas leases on Indian lands only with the permission of the Tribe with jurisdiction over the lands.

Two commenters asked if § 3192.1(b) included allotted lands. One commenter asked if BLM would enter into a cooperative agreement if it only applied to allotted lands, and if so, whether or not BLM would still require permission from the Tribe even though Tribal lands would not be impacted. The definition of Indian lands provided by FOGRMA includes allotted lands, therefore, § 3192.1(b) includes allotted lands and BLM would enter into a cooperative agreement even if it only applied to allotted lands. We added the words ''Indian lands'' to the final rule for clarification. The requirement that Tribal permission be obtained is statutory. Therefore if a State wanted to enter into a cooperative agreement involving allotted lands, BLM would require the State to obtain the permission of the Tribe with jurisdiction over the lands.

Section 3192.2 states that the Tribal chairman or other authorized official of any Tribe with producing oil and gas leases may enter into a cooperative agreement and that Tribes may join together to apply for a multi-tribal cooperative agreement. It also provides for the governor of a State to enter into a cooperative agreement involving Indian lands with the permission of the Tribe having jurisdiction over the lands.

One commenter asked that the word ''chairman'' in § 3192.2(a) be replaced with ''chairperson.'' We agree, and the final rule adopts the comment. Another commenter asked if the Tribe would be required to have producing oil or gas leases, or Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*) (IMDA) agreements, before it can enter into an agreement to inspect oil and gas leases. Section 3192.2(a) only authorizes Tribes with producing oil and gas leases or IMDA agreements on Indian lands under their jurisdiction to apply for a cooperative agreement.

One commenter stated that if individually owned/allotted land is to be included, BLM, the Tribe and the State should advise the individual Indian landowners of the agreement with the State. Section 3192.3(c) already requires the written consent of all individual land owners for such lands to be included in an agreement.

Section 3192.3 requires the applicant to submit completed Standard Forms 424, 424A, and 424B. It requires a description of the type and extent of activities proposed and the dates the proposed agreement takes effect. It also states that allotted lands may be included in an agreement with the allottee's written consent.

Several comments were received relating to the requirement to have the allottee's written consent. One commenter stated that obtaining the permission of the Tribes and allottees is important. One commenter believed that BLM and the Tribe should be required to obtain the written consent of 100% of the individuals owning undivided fractional interests in each allotment/tract. The commenter also said that the number of consents, as well as the written consents, must be verified by the Bureau of Indian Affairs (BIA) prior to individually owned land being included in an agreement. Section 3192.3(c) of the regulations requires the written consent of all individual Indian land owners for their lands to be included in an agreement. Section 3192.3 has been modified to indicate that BLM will ask BIA to verify that the written consents obtained by a Tribe or State include 100% of the owners of record of each individual Indian tract.

One commenter stated that ''there are no allottees living at this time'' and that the regulations are not consistent with *Mustang* v. *Cheyenne-Arapaho,* 2 Okla. Trib. 158 (1991) and *Mustang Production Company* v. *Harrison,* 94 F. 3d 1382 (10 Cir. 1996); certiorari denied 117 S. Ct. 1288 (1997). There are still allottees living in some areas of the country, so BLM did not adopt that part of the comment and the word ''allottee'' has not been deleted. In order to clarify the statement in the case of leases that have passed on to the heirs of the original allottee, we amended the language to include heirs of allottees in § 3192.3(c) and elsewhere, as appropriate. The *Mustang* decision as well as the Federal decision relates to governmental authority. BLM has made a policy decision to give individual land owners a say over who will manage and inspect their property, which is a property management function rather than a governmental function.

Section 3192.4 states that cooperative agreements may be in effect for between 1–5 years, depending upon the agreement. This section remains as proposed since we received no comments on this section.

Section 3192.5 describes the requirements for modifying a cooperative agreement. Both parties must agree to the modification in writing before a modification is effective. For State cooperative agreements involving Indian lands, where the proposed modification would affect the duration or scope of an agreement, the State must obtain the Tribe's written consent.

One commenter asked if an affected allottee would be required to provide written consent to a proposed modification impacting the duration or scope of a cooperative agreement. Any proposed modification to an agreement involving allottees/heirs that affects the duration or scope of an agreement would require written permission of the affected allottee/heirs. In the final rule section 3192.5 the word ''both'' has been changed to ''all.'' The section has also been changed to include a reference to allottees/heirs.

Section 3192.6 cross-references § 3190.1 of this part where the requirements relating to a Tribe or State receiving proprietary data from BLM under a cooperative agreement are located. The requirements for evaluating requests for proprietary data are found at 43 CFR 3190.1. BLM received no comments on this section and it remains as proposed.

Section 3192.7 states the requirements for spending the money a Tribe receives under a cooperative agreement. Such money may only be used for costs incurred which are directly related to the activities carried out under an agreement. BLM received no comments on this section and it remains as proposed.

Section 3192.8 states that activities under a cooperative agreement may be subcontracted with BLM's written approval.

One commenter recommended that an alternative to BLM entering into a cooperative agreement with a State to inspect Indian oil and gas operations would be for BLM to enter into a cooperative agreement with the Tribe, and the Tribe subcontract to the State. Section 3192.8 already provides that activities may be subcontracted with BLM's written consent.

Section 3192.9 describes the terms that Tribes or States must include in cooperative agreements. The cooperative agreement must state the purpose, objective and authority; contain definitions of terms used in an agreement; describe the lands covered in an agreement; describe the roles and responsibilities of BLM and the Tribe or State; describe the activities that will be carried out under an agreement; and define minimum performance standards. Agreements must include provisions to protect proprietary data; prevent conflict of interest; provide for sharing of civil penalties; and provide for termination of the agreement. Agreements must identify BLM and Tribal or State contacts and provide for the avoidance of duplication of effort. Agreements must list schedules for inspection activities; training; periodic reviews and meetings. Agreements must specify the limit on the dollar amount of Federal funding; describe procedures for payment or reimbursement; and describe allowable costs and plans for BLM oversight.

One commenter referenced § 3192.9(j)(1) and asked if BLM has the capability of thoroughly training Tribal personnel on a continuing basis as positions are vacated and filled with new personnel. The commenter also stated that where individually owned/allotted land is concerned, BLM should absolutely guarantee that inspections be made on that land either by qualified Tribal personnel or BLM personnel. BLM training provides for formal classroom instruction, on-the-job training and certification of inspectors before they are allowed to conduct independent inspections on Federal or Indian lands. Section 3192.14 of this regulation requires that Tribal inspectors go through the same training and certification procedure as BLM inspectors to ensure that only qualified personnel conduct inspections.

Section 3192.10 cross-references the list of allowable costs under cooperative agreements in 43 CFR subpart 12, identifies the level of funding for cooperative agreements and states requirements related to funding cooperative agreements.

One commenter stated that where BLM turns over the program, the recipient Tribe should be allocated sufficient Federal funds to perform the assumed tasks. Currently, and under these regulations, funding for cooperative agreements is based on costs associated with activities carried out under the agreement and is negotiated between the Tribe and BLM.

One commenter requested that the amount of funding provided to a Tribe under a cooperative inspection agreement be equal to the amount of funding they would receive from the Minerals Management Service under its cooperative audit agreement. The commenter also requested that BLM seek input from, and involve Tribes in, BLM's fiscal year budgeting process for the cooperative agreements. By law, BLM can only fund its agreements for those costs directly required to carry out the program. Costs must be based on the activities carried out by the Tribe under the agreement, and cannot be based on what the Tribe is receiving from another agency under a different program. BLM did not adopt that part of the comment. Each year BLM requests input from Tribes participating in the cooperative agreement program on the amount of funding needed for the next year's agreement. Therefore, we believe that Tribes already are involved in BLM's budget process to the extent that is necessary.

Section 3192.11 describes the conditions under which civil penalties are shared between a Tribe and BLM.

One commenter stated that this section is misleading in that the first sentence implies that civil penalties are shared equally, then it goes on to say something different. The commenter recommended that the first sentence be deleted and the last sentence be expanded to include equal sharing of civil penalties after exceeding the amount of Federal funding. We agree that the language may be confusing. This section has been rewritten.

Section 3192.12 identifies the activities that may be carried out under cooperative agreements and the conditions under which they may be carried out. Such activities include inspections, issuing Notices of Non-Compliance, issuing Notices to Shut Down Operations, conducting investigations, and conducting oil transporter inspections.

One commenter asked if Tribes could conduct inspection, investigation or enforcement activities on producing Federal and State oil and gas leases within the Indian Tribe's jurisdiction. Section 8(a) of FOGRSFA eliminates cooperative agreements on Federal lands which effectively eliminates a Tribe's ability to enter into these type of agreements.

One commenter had several questions relating to split-estate lands where the Federal government owns the mineral estate and a Tribe owns the surface. The questions were: whether a State could enter into a cooperative agreement with the permission of the Tribe involved, to conduct inspection and enforcement for Federal oil and gas leases; whether an Indian Tribe could inspect such Federal leases under a cooperative agreement; and whether such lands could be included in a delegation of authority to States under Section 205 of FOGRMA.

Section 8(a) of FOGRSFA eliminates cooperative agreements on Federal lands. Although FOGRSFA does not specifically address split-estate situations, BLM interprets the term ''Federal lands'' as applying to all Federal mineral interests. As such, Federal leases involving split-estate lands of the type to which the commenter refers would not be included in a cooperative agreement. BLM will allow inclusion of Federal leases involving split-estate lands in a delegation of authority to a State.

One commenter stated that § 3192.12(a) should reference Tribal and allotted oil and gas leases if allotted leases are part of the cooperative agreement. We agree; this section has been changed to include allotted lands.

Section 3192.13 identifies those activities that cannot be carried out by a Tribe or State, but which must remain BLM's responsibility. These include issuing Notices of Non-compliance that involve monetary assessments and penalties; collecting assessments and penalties; calculating and distributing shared civil penalties; training and certifying Tribal and State inspectors; and issuing and regulating inspector identification cards and identifying leases to be inspected (taking into account priorities of the Tribe). Section 3192.13(b) reserves BLM's right to enter lease sites to conduct inspections, enforcement, investigations or other activities necessary to supervise lease operations.

One commenter thought that BLM needed to explain what we meant by ''control'' under § 3192.13(5) ''Issue and control inspector identification cards.'' We agree that the word ''control'' in this context is vague and in the final rule ''control'' has been changed to ''regulate.'' By using the term ''regulate'' BLM means that we will control the use and possession of inspector identification cards. For example, if an inspector is decertified or leaves the inspection program, BLM will require that the inspector return the identification card to BLM.

One commenter asked that if allotted leases are included in a cooperative agreement, whether BLM would take into account the allottee's priorities. Due to the large number of allottees and heirs that may be involved, it is impractical for BLM to consult all of the allottees/heirs on an annual basis.

However, BLM will consult with BIA concerning priorities for allotted lands. Section 3192.13(a)(6) has been changed to include consultation with BIA to determine priorities on allotted lands.

Section 3192.14 describes the certification requirements that Tribal or State inspectors must meet before BLM will authorize them to conduct activities under a cooperative agreement. It also describes conflict of interest restrictions for Tribal and State inspectors. BLM received no comments on this section and it remains as proposed.

Section 3192.15 describes the conditions under which a cooperative agreement may be terminated by mutual agreement or unilaterally by BLM. BLM received no comments on this section, however, BLM added language to make it clear that a Tribe may unilaterally terminate a cooperative agreement. Unilateral terminations on the part of the Tribe are effective 60 days after BLM receives written notice that the Tribe is terminating the agreement. The 60 days is to allow BLM time to ensure proper staffing exists to fill the void left by the terminated agreement.

Section 3192.16 describes the notification process BLM will follow where BLM plans to terminate an agreement unilaterally.

One commenter recommended changing § 3192.16(a) to read ''* * * BLM must send a notice to you that lists the reasons why BLM plans to terminate the agreement'' to make it more clear. BLM adopted this recommendation with only minor wording changes.

One commenter asked if there was a time frame within which the impacted Tribe or State must submit its plan for correction under § 3192.16(b). This section has been modified and under the final rule, Tribes and States have 30 days to submit a plan for correction. This time frame may be extended at the request of the Tribe or State.

One commenter asked if under § 3192.16(c) BLM has a time frame within which to make a decision to either approve or disapprove the plan. The commenter also asked that if BLM does not approve the plan, will BLM provide the impacted State or Tribe another opportunity to submit another plan for approval, or is it left up to the appeal process. BLM added a new sentence to § 3192.16(b) that provides for a 30-day BLM review. BLM also changed § 3192.16(d) and (e) to indicate that a second opportunity is available to correct errors in the first submission. Under the final rule, if the State or Tribe does not correct the problem(s) within 60 days of the second notice, the agreement terminates.

Section 3192.17 describes what BLM requires to reinstate a cooperative agreement that was terminated either by mutual consent or unilaterally by BLM. There were no changes to this section in the final rule since we received no comments on this section.

Section 3192.18 states that adversely affected Tribes and States may appeal a BLM decision and describes where in 43 CFR the provision for appealing a BLM decision are found. This section was revised to conform to other appeals provisions in this title.

Effective Date

The Administrative Procedure Act (APA) (5 U.S.C. 553(d)) generally requires that newly promulgated regulations not take effect until 30 days after publication to allow regulated entities time to bring their programs into compliance with the new regulations. However, section 553(d)(3) allows regulations to take effect in less than 30 days for good cause shown. BLM does not believe that the 30 day rule should apply to these regulations and believes that for good cause they should take effect immediately.

The primary change from existing requirements that these regulations implement is an increase in funding from BLM. In order for the regulated community to take full advantage of the increase in funding these regulations provide, they must take effect before the beginning of the next fiscal year. Furthermore, this rule does not contain provisions that require regulated entities to modify their programs to come into compliance with the new regulations. BLM is prepared to immediately increase funding for the cooperative agreement program. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(d)(3) that this rule may take effect upon publication.

Compliance With the National Environmental Policy Act

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(C) is required. It has been determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. This item states that ''Policies, directives, regulations, and guidelines of an administrative financial, legal, technical or procedural nature * * *'' are categorically exempt. Because this rule addresses the financial aspects of the Bureau's cooperative inspection agreement program and implements a statutory modification in the program authority, we believe that it falls into this category, thereby obviating any further review under NEPA. It has also been determined that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, ''categorical exclusions'' are actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Compliance With the Paperwork Reduction Act

This rule does not add new information collection requirements and the existing requirements have been approved by the Office of Management and Budget (OMB) under OMB approval numbers 0348–0040, 0348–0043 and 0348–0044.

Compliance With the Regulatory Flexibility Act

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the final rule will not have a significant economic impact on a substantial number of small entities. The reasons for this determination are that the economic impacts of the rule are not considered significant nor will the rule impact a substantial number of small entities. The effect of this rule will be to increase funding for cooperative inspection agreements from ''up to 50 percent'' to ''up to 100 percent.'' Only 5 Tribes currently participate in the cooperative agreement program, but there are 29 oil and gas Tribes eligible to participate. Potential funding could approach $1 million. However, it would be speculative for BLM to try to estimate how many of the non-participating Tribes may decide to participate as a result of the increase in funding. It is unlikely that all of the non-participating Tribes will elect to enter into this type of agreement with BLM. Current funding is approximately $250,000 so the increase will be approximately $250,000. For the 5 Tribes currently participating in the program, individual increases range from $8,000 to $55,000. We believe that this funding will have an insignificant impact on the overall budgets of Tribes with producing oil and gas leases that qualify for the program. Therefore, BLM certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Compliance With the Unfunded Mandates Reform Act

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

Compliance With Executive Order 12612

This final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Eliminating cooperative agreements with States for inspection and enforcement of oil and gas leases on Federal lands is a requirement of section 8(a) of FOGRSFA. States that are interested in conducting inspections on Federal oil and gas leases may still do so under a Delegation of Authority as provided in section 205 of FOGRMA (30 U.S.C. 1735).

Therefore, in accordance with Executive Order 12612, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Compliance With Executive Order 12630

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. It does not provide for the taking of any property rights or interests. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Compliance With Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Compliance With Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 43 CFR Part 3192

Administrative practice and procedure, Authority delegations (Government agencies), Government contracts, Indians—lands, Intergovernmental relations, Mineral Royalties, Reporting and recordkeeping requirements.

Accordingly, under the authorities cited below, and for the reasons stated in the preamble, part 3190, subchapter C, chapter II, subtitle B, title 43 of the Code of Federal Regulations is amended as follows:

PART 3190—DELEGATION OF AUTHORITY, COOPERATIVE AGREEMENTS AND CONTRACTS FOR OIL AND GAS INSPECTIONS

1. Revise the authority citation to read as follows:

§ 3190.2–2 [Amended]

Authority: 30 U.S.C. 1735 and 1751.

2. Revise § 3190.2–2(b)(2) to read as follows:

* * * * *

(b) * * *

(2) Up to 100 percent for a cooperative agreement.

* * * * *

3. Revise Subpart 3192 of part 3190 to read as follows:

Subpart 3192—Cooperative Agreements

Sec.

Subpart 3192—Cooperative Agreements

§ 3192.1 What is a cooperative agreement?

(a) A cooperative agreement is a contract between the Bureau of Land Management (BLM) and a Tribe or State to conduct inspection, investigation, or enforcement activities on producing Indian Tribal or allotted oil and gas leases.

(b) BLM will enter into a cooperative agreement with a State to inspect oil and gas leases on Indian lands only with the permission of the Tribe with jurisdiction over the lands.

§ 3192.2 Who may apply for a cooperative agreement with BLM to conduct oil and gas inspections?

(a) The Tribal chairperson, or other authorized official, of a Tribe with producing oil or gas leases, or agreements under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*), may apply for a cooperative agreement with BLM for Indian lands under the Tribe's jurisdiction.

(b) Tribes may join together to apply for a multi-tribe cooperative agreement.

(c) The Governor of a State having a Tribal resolution from the Tribe with jurisdiction over the Indian lands, permitting the Governor to enter into a cooperative agreement, may apply for a cooperative agreement with BLM.

§ 3192.3 What must a Tribe or State include in its application for a cooperative agreement?

(a) To apply for a cooperative agreement you must complete—

(1) Standard Form 424, Application for Federal Assistance;

(2) Standard Form 424A, Budget Information—Non-Construction Programs; and

(3) Standard Form 424B, Assurances—Non-Construction Programs.

(b) You must describe the type and extent of oil and gas inspection, enforcement, and investigative activities proposed under the agreement and the period of time the proposed agreement will be in effect (See section 11 of Standard Form 424).

(c) You may include allotted lands under an agreement with the written consent of all allottees or their heirs.

BLM will ask the Bureau of Indian Affairs (BIA) to verify that the Tribe or State has obtained all of the necessary signatures to commit 100% of each individual tract of allotted lands to the agreement.

§ 3192.4 What is the term of a cooperative agreement?

Cooperative agreements can be in effect for a period from 1 to 5 years from the effective date of the agreement, as set out in the agreement.

§ 3192.5 How do I modify a cooperative agreement?

You may modify a cooperative agreement by having all parties to the agreement consent to the change in writing. If the agreement is with a State, and the modification would affect the duration or scope of the agreement, then the State must obtain the written consent of the affected Tribe and/or allottee or heir.

§ 3192.6 How will BLM evaluate my request for proprietary data?

BLM will evaluate Tribal or State requests for proprietary data on a case-by-case basis according to the requirements of § 3190.1 of this part.

§ 3192.7 What must I do with Federal assistance I receive?

You must use Federal assistance that you receive only for costs incurred which are directly related to the activities carried out under the cooperative agreement.

§ 3192.8 May I subcontract activities in the agreement?

You must obtain BLM's written approval before you subcontract any activities in the agreement with the exception of financial audits of program funds that are required by the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*).

§ 3192.9 What terms must a cooperative agreement contain?

The cooperative agreement must—

(a) State its purpose, objective, and authority;

(b) Define terms used in the agreement;

(c) Describe the Indian lands covered;

(d) Describe the roles and responsibilities of BLM and the Tribe or State;

(e) Describe the activities the Tribe or State will carry out;

(f) Define the minimum performance standards to evaluate Tribal or State performance;

(g) Include provisions to—

(1) Protect proprietary data, as provided in § 3190.1 of this part;

(2) Prevent conflict of interest, as provided in § 3192.14(d);

(3) Share civil penalties, as provided in § 3192.11; and

(4) Terminate the agreement;

(h) List BLM and Tribal or State contacts;

(i) Avoid duplication of effort between BLM and the Tribe or State when conducting inspections;

(j) List schedules for—

(1) Inspection activities;

(2) Training of Tribal or State inspectors;

(3) Periodic reviews and meetings;

(k) Specify the limit on the dollar amount of Federal funding;

(l) Describe procedures for Tribes or States to request payment reimbursement;

(m) Describe allowable costs subject to reimbursement; and

(n) Describe plans for BLM oversight of the cooperative agreement.

§ 3192.10 What costs will BLM pay?

(a) BLM will pay expenses allowed under part 12, subpart A, Administrative and Audit Requirements and Cost Principles for Assistance Programs, of this title.

(b) BLM will fund the agreements up to 100 percent of allowable costs.

(c) Funding is subject to the availability of BLM funds.

(d) Funding for cooperative agreements is subject to the shared civil penalties requirement of § 3192.11.

§ 3192.11 How are civil penalties shared?

(a) Civil penalties that the Federal Government collects resulting from an activity carried out by a Tribe or State under a cooperative agreement are shared equally between the inspecting Tribe or State and BLM.

(b) BLM must deduct the amount of the civil penalty paid to the Tribe or State from the funding paid to the Tribe or State for the cooperative agreement.

§ 3192.12 What activities may Tribes or States perform under cooperative agreements?

Activities carried out under the cooperative agreement must be in accordance with the policies of the appropriate BLM State or field office and as specified in the agreement, and may include—

(a) Inspecting Tribal or allotted oil and gas leases for compliance with BLM regulations;

(b) Issuing initial Notices of Incidents of Non-Compliance, Form 3160–9, and Notices to Shut Down Operations, Form 3160–12;

(c) Conducting investigations; or

(d) Conducting oil transporter inspections.

§ 3192.13 What responsibilities must BLM keep?

(a) Under cooperative agreements, BLM continues to—

(1) Issue Notices of Incidents of Noncompliance that impose monetary assessments and penalties;

(2) Collect assessments and penalties;

(3) Calculate and distribute shared civil penalties;

(4) Train and certify Tribal or State inspectors;

(5) Issue and regulate inspector identification cards; and

(6) Identify leases to be inspected, taking into account the priorities of the Tribe. Priorities for allotted lands will be established through consultation with the BIA office with jurisdiction over the lands in the agreement.

(b) If BLM enters into a cooperative agreement, that agreement does not affect BLM's right to enter lease sites to conduct inspections, enforcement, investigations or other activities necessary to supervise lease operations.

§ 3192.14 What are the requirements for Tribal or State inspectors?

(a) Tribal or State inspectors must be certified by BLM before they conduct independent inspections on Indian oil and gas leases.

(b) The standards for certifying Tribal or State inspectors must be the same as the standards BLM uses for certifying BLM inspectors.

(c) Tribal and State inspectors must satisfactorily complete on-the-job and classroom training in order to qualify for certification.

(d) Tribal or State inspectors must not—

(1) Inspect the operations of companies in which they, a member of their immediate family, or their immediate supervisor, have a direct financial interest; or

(2) Use for personal gain, or gain by another person, information he or she acquires as a result of his or her participating in the cooperative agreement.

§ 3192.15 May cooperative agreements be terminated?

(a) Cooperative agreements may be terminated at any time if all parties agree to the termination in writing.

(b) BLM may terminate an agreement without Tribal or State agreement if the—

(1) Tribe or State fails to carry out the terms of the agreement; or

(2) Agreement is no longer needed.

(c) A Tribe may unilaterally terminate an agreement after notifying BLM. For a unilateral termination, the agreement terminates 60 days after the Tribe notifies BLM.

§ 3192.16 How will I know if BLM intends to terminate my agreement?

(a) If BLM intends to terminate your agreement because you did not carry out the terms of the agreement, BLM must send you a notice that lists the reason(s) why BLM intends to terminate the agreement.

(b) Within 30 days after receiving the notice, you must send BLM a plan to correct the problem(s) BLM listed in the notice. BLM has 30 days to approve or disapprove the plan, in writing.

(c) If BLM approves the plan, you have 30 days after you receive notice of the approval to correct the problem(s).

(d) If you have not corrected the problem within 30 days, BLM will send you a second written termination notice that will give you another opportunity to correct the problem.

(e) If the problem is not corrected within 60 days after you receive the second notice, BLM will terminate the agreement.

§ 3192.17 Can BLM reinstate cooperative agreements that have been terminated?

(a) If your cooperative agreement was terminated by consent, you may request that BLM reinstate the agreement at any time.

(b) If BLM terminated an agreement because you did not carry out the terms of the agreement, you must prove that you have corrected the problem(s) and are able to carry out the terms of the agreement.

(c) For any reinstatement request BLM will decide whether or not your cooperative agreement may be reinstated and, if so, whether you must make any changes to the agreement before it can be reinstated.

§ 3192.18 Can I appeal a BLM decision?

Any party adversely affected by a BLM decision made under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

Dated: September 16, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 1866/P.L. 105–43

Need-Based Educational Aid Antitrust Protection Act of 1997 (Sept. 17, 1997; 111 Stat. 1140)

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Title	Stock Number	Price	Revision Date
●**1, 2 (2** Reserved)	(869–032–00001–8)	$5.00	Feb. 1, 1997
●**3** (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
●**4**	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
●1–699	(869–032–0004–2)	34.00	Jan. 1, 1997
●700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
●1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
●0–26	(869–032–00007–7)	26.00	Jan. 1, 1997
●27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
●53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
●210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
●300–399	(869–032–00011–5)	22.00	Jan. 1, 1997
●400–699	(869–032–00012–3)	28.00	Jan. 1, 1997
●700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
●900–999	(869–032–00014–0)	40.00	Jan. 1, 1997
●1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
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●1900–1939	(869–032–00018–2)	19.00	Jan. 1, 1997
●1940–1949	(869–032–00019–1)	40.00	Jan. 1, 1997
●1950–1999	(869–032–00020–4)	42.00	Jan. 1, 1997
●2000–End	(869–032–00021–2)	20.00	Jan. 1, 1997
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9 Parts:			
●1–199	(869–032–00023–9)	39.00	Jan. 1, 1997
●200–End	(869–032–00024–7)	33.00	Jan. 1, 1997
10 Parts:			
●0–50	(869–032–00025–5)	39.00	Jan. 1, 1997
●51–199	(869–032–00026–3)	31.00	Jan. 1, 1997
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●500–End	(869–032–00028–0)	42.00	Jan. 1, 1997
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12 Parts:			
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●200–219	(869–032–00031–0)	20.00	Jan. 1, 1997
●220–299	(869–032–00032–8)	34.00	Jan. 1, 1997
●300–499	(869–032–00033–6)	27.00	Jan. 1, 1997
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●170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
●200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
●300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
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●1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
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●150–189	(869–028–00151–3)	33.00	July 1, 1996
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CFR Index and Findings Aids	(869–032–00047–6)	45.00	Jan. 1, 1997

Title	Stock Number	Price	Revision Date
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Subscription (mailed as issued)		247.00	1997
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Complete set (one-time mailing)		264.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.